

0217

1                   BEFORE THE PUBLIC SERVICE COMMISSION  
2                   OF THE STATE OF DELAWARE  
3                   VOLUME 4  
4

5       IN RE:    IN THE MATTER OF               :  
6       INTEGRATED RESOURCE PLANNING       :  
7       FOR THE PROVISION OF STANDARD       :  
8       OFFER SUPPLY SERVICE BY            :   PSC DOCKET NO. 06-241  
9       DELMARVA POWER & LIGHT COMPANY:  
10      UNDER 26 DEL. C. §§ 1007(c) &       :  
11      (d): REVIEW AND APPROVAL OF       :  
12      THE REQUEST FOR PROPOSALS FOR       :  
13      THE CONSTRUCTION OF NEW            :  
14      GENERATION RESOURCES UNDER 26       :  
15      DEL. C. §§ 1007(d) (OPENED        :  
16      JULY 25, 2006)                    :

17                       Public Service Commission Hearing taken  
18       pursuant to notice before Gloria M. D'Amore, Registered  
19       Professional Reporter, at Legislative Hall, Dover,  
20       Delaware, on Tuesday, October 17, 2006 beginning at  
21       approximately 10:00 a.m., there being present:  
22

23       APPEARANCES:

24           On behalf of the Public Service Commission:  
25           ARNETTA McRAE, CHAIR  
26           J. DALLAS WINSLOW, COMMISSIONER  
27           JAY LESTER, COMMISSIONER  
28           JOANN CONAWAY, COMMISSIONER  
29           JEFFREY CLARK, COMMISSIONER  
30

31                       CORBETT & WILCOX  
32           Registered Professional Reporters  
33           230 N. Market Street           Wilmington, DE 19801  
34

0218

35       APPEARANCES CONTINUED:

36           On behalf of the Department of Natural Resources  
37           and Environmental Control:  
38           PHILIP J. CHERRY  
39           On behalf of the Public Service Commission Staff:  
40           GARY A. MYERS, ESQUIRE  
41  
42           On behalf of the Public Service Commission Staff:  
43           JAMES McC. GEDDES, ESQUIRE  
44           On behalf of the Public Service Commission Staff:  
45           BRUCE H. BURCAT, EXECUTIVE DIRECTOR  
46           CONNIE S. McDOWELL, CHIEF OF TECHNICAL SERVICES  
47           KAREN J. NICKERSON, SECRETARY  
48           ROBERT HOWATT, PUBLIC UTILITIES ANALYST  
49           JANIS DILLARD, REGULATORY POLICY ADMINISTRATOR  
50           DAVID BLOOM, PUBLIC UTILITIES ANALYST  
51           DAVE BONAR  
52           MICHAEL SHEEHY  
53           On behalf of the Office of the Public Advocate:  
54           G. ARTHUR PADMORE  
55           JOHN CITROLO

14 On behalf of Delmarva Power and Light Company:  
ANTHONY C. WILSON, ESQUIRE  
15 THOMAS S. SHAW, EXECUTIVE VICE PRESIDENT  
JONATHAN GUY, ESQUIRE  
16 ANTHONY J. KAMERICK, VICE PRESIDENT AND TREASURER  
MARK FINFROCK, DIRECTOR OF RISK MANAGEMENT

17  
On behalf of NRG Energy, INC.:  
18 RAYMOND G. LONG  
GERRY HOPPER  
19 TOM KRIZMANICH  
20 On behalf of Delaware Energy Users Group:  
LOUIS R. MONACELL, ESQUIRE

21  
On behalf of the University of Delaware:  
22 WILLETT KEMPTON, Ph.D.  
JEREMY FIRESTONE, Ph.D., J.D.

23  
On behalf of Coalition for Climate  
24 Change Study & Action:

0219  
1 On behalf of New Energy Opportunities, Inc.:  
BARRY J. SHEINGOLD

2  
On behalf of Green Delaware:  
3 ALAN MULLER  
4 On behalf of Bluewater Wind:  
PETER MANDELSTAM

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
0220

1 CHAIR McRAE: Now we come to the docket  
2 that, I believe, most people are here for.  
3 And what I would like to do, if I ever  
4 get used to this chair, what I would like to do is start  
5 out with an opportunity to have public comment. I'm sure  
6 that some of you are not going to want to stay for the  
7 duration of the proceeding. But we do want to capture  
8 your thoughts with regard to this docket, No. 06-241.



16 Louis Monacell.

17 MR. MONACELL: Good morning. I would  
18 also like to participate issue by issue, but I have a  
19 brief opening statement.

20 There are four points that I would like  
21 to bring to the Commission's attention and to the Energy  
22 Office's attention.

23 First, that there are dangers involved  
24 in this IRP process, dangers of potential stranded costs.

0223 So, I caution you to proceed cautiously.

1 If a contract is entered into for, say,  
2 20 years at an above market price, there could be  
3 stranded costs. And stranded costs could lead to one of  
4 two things. It could lead to bankruptcy of the utility.  
5 Cost borne by the shareholders. Or it could lead to a  
6 desk file with customers migrating to third-party  
7 suppliers with remaining SOS customers just paying  
8 progressively higher prices.

9 So, you need to proceed cautiously on a  
10 number of the issues.

11 Second, one of the best ways to proceed  
12 cautiously is what, apparently, is being proposed by all  
13 parties, which is the limit, the IRP process to serving  
14 the SOS load of residential and small commercial  
15 customers. That is prudent because no one is projecting  
16 that they will have a significant level of migration.

17 In New Jersey, zero customers have  
18 migrated. 15 percent used in the analysis by the  
19 independent consultant is probably a maximum that it  
20 could possibly be.

21 Contrast that to larger CNI customers  
22 where most of them have already migrated. No one is  
23 proposing an RFP process for the larger CNI.

0224 That is fully consistent with House Bill  
1 6. House Bill 6 only had a phase in, if you will  
2 remember, for residential and small commercial.

3 And why the status speaks in terms of  
4 RFP process for acquiring new generation resources,  
5 nobody in this docket is proposing looking at anything  
6 other than the 1,000 megawatts peak load and the base  
7 load for residential and small commercial. To do  
8 otherwise would be imprudent, we would suggest.

9 Third, if the IRP process is only to  
10 serve the SOS needs of residential and small commercial,  
11 other customer classes should not be forced to bear the  
12 cost of that process because they are not within the  
13 purview of what is being -- the process looking at.

14 And finally, you may remember, that it  
15 was the larger CNI customers that got the largest rate  
16 increase on May 1st. Over 100 percent if they stayed  
17 with Delmarva. If they went to the market, maybe they  
18 got discounted 10 or 15 percent off that. But that is  
19 still a whopping rate increase of 85, 90 percent.

20 We would plead that you not make their  
21 situation worse by not proceeding cautiously and ending  
22

23 up with stranded cost that the predicament will be, What  
24 do we do with those stranded cost. Thank you.

0225

1 COMMISSIONER WINSLOW: Mr. Monacell, I  
2 have a question for you, sir.

3 Are you really saying that there is no  
4 way, if there is a long-term contract, the stranded cost  
5 are unavoidable.

6 Correct?

7 MR. MONACELL: No. I am not saying they  
8 are unavailable. What needs to be done is, at the end of  
9 the day, before any contract is run, somebody needs to do  
10 a reliable, as reliable as they can, long-term projection  
11 of what market price are and compare the cost of that  
12 long-term contract with the projected cost of buying  
13 everything in the wholesale market.

14 To enter into any contract that is  
15 significantly above, you are going to have stranded cost.

16 COMMISSIONER WINSLOW: Thank you very  
17 much.

18 MR. BONAR: From the Citizen for Climate  
19 Change Chad Tolman.

20 MR. TOLMAN: Good morning. My name is  
21 Chad Climate. I am a climate change expert and a  
22 visiting scientist at the University of Delaware in the  
23 Department of chemistry and biochemistry.

24 House Bill 6 has five basic criteria for

0226

1 the RFP. Number one, energy price stability. Number  
2 two, reductions in environmental impact. And number  
3 three, benefits of adopting new and emergent  
4 technologies.

5 The independent consultant's final  
6 report clearly misses the point of legislation. It  
7 awards the largest number of points 40 out of 100, who  
8 will determine who will get a long-term purchase power  
9 agreement to the company with the lowest current cost of  
10 electrical energy.

11 It missed the main point, which is the  
12 need to answer the following question.

13 To meet an increasing demand for  
14 electricity do we want to build another coal plant in  
15 this Delaware with this associate emissions of carbon  
16 dioxide and other pollutants, or do we want to choose a  
17 different path, one based on increased energy efficiency  
18 and renewable energy sources with the long-term goal of  
19 eliminating greenhouse gas emissions, protecting our  
20 state's people and wildlife and creating new industries  
21 and jobs. That is the choice that will be made by the  
22 terms of this RFP.

23 Coal is dirty, but it is cheap. If you  
24 don't count the cost of lost work time, hospitalizations,

0227

1 medical care and increased educational experiences for  
2 neurologically damaged children from the emissions of  
3 SOX, NOX, fine particulates and mercury, or the loss of  
4 homes, businesses, churches, schools and hospitals, that

5 will occur as temperatures and sea level arise with  
6 increasing atmospheric concentrations of CO2.

7 The coal based companies would like to  
8 see the lowest cost producer get the contracts, while  
9 they ignore the urgent warnings of the worlds leading  
10 scientist on the need to act soon to reduce global  
11 warming, if we are to avoid dangerous tipping point and  
12 pass on the costs, health impacts, carbon taxes, which  
13 are sure to come as the damage from climate change  
14 increases and the equipment needed for carbon capture and  
15 sequestration to the local citizens and ratepayers. It  
16 is a classic case of bait and switch leaving Delawareans  
17 holding the bag if their cost rise ever higher. This is  
18 surely not what the legislature intended.

19 The independent consultant's report does  
20 not contain the terms climate change or global warming  
21 anywhere in its 69 pages. The term greenhouse gas  
22 appears on Page 58 where low greenhouse gas emissions are  
23 given only four out of possible 100 points.

24 Emissions of greenhouse gasses,  
0228

1 particularly CR2 are going to be a major factor in price  
2 stability, cost to consumers and environmental impacts  
3 which will greatly increase with time. This is the 900  
4 pound gorilla coming down the street, which the  
5 independent consultant has chosen to ignore.

6 What Delmarva does now with new  
7 electrical generation should be part of a long-range plan  
8 that includes RGGI, the renewable energy portfolio  
9 standard for Delaware, and a plan to eventually eliminate  
10 all emissions from fossil fuel use in Delaware.  
11 California and 10 other states have already agreed to cut  
12 their CO2 emissions from all sources to 20 percent of  
13 their 1990 values by 2050. Delaware should do at least  
14 as much. We are, especially, vulnerable to sea level  
15 rise, which was a foot at Lewes during the past century,  
16 and it is very likely to be to two to four feet and  
17 perhaps much more during the next.

18 We need to start by getting the terms of  
19 the Delmarva RFP right. I propose that it be a threshold  
20 requirement that any new electrical generating plant  
21 built in Delaware using coals of fuel must use the best  
22 available control technology, minimize emissions of  
23 carbon dioxide, as well as the conventional pollutants.  
24 This means carbon capture and sequestration and scrubbing

0229  
1 from start up, not at some future possible date.

2 Let's begin now to build a clean energy  
3 future for Delaware for the sake of the children. Thank  
4 you.

5 CHAIR McRAE: I would note that for  
6 future speakers the timekeeper is over to the side. And  
7 if you would periodically check to make sure you are  
8 within your time limit, I would appreciate it.

9 MR. BONAR: For clarification purposes,  
10 when you see the yellow card come up, you have a minute.  
11 When you have the red card come up, wrap it up.

12 CHAIR McRAE: You know he is  
13 color-blind. That card is orange.

14 MR. BONAR: Bluewater Wind. And I think  
15 it is Peter Mandelstam.

16 MR. MANDELSTAM: Thank you, Madam Chair,  
17 Members of the Commission. Mr. Phil Cherry.

18 It is an honor and pleasure to be here  
19 today. I am head of Bluewater Wind, an offshore wind  
20 development company. We have a sister company, Arcadia  
21 Wind Power that has developed projects on land. This is  
22 not a day for speeches. But let me just begin by  
23 thanking you for all of the work you have done. It is  
24 really quite impressive. I have been involved in RFP's

0230

1 around the country. This is without a doubt, the  
2 speediest and, perhaps, the most thoughtful process that  
3 I have seen. I wanted to specifically thank the  
4 Commission and Staff for trying to balance the inevitable  
5 tensions involved in an RFP such as this and reserve my  
6 comments for the specific agenda items.

7 But let me say that I spent yesterday  
8 afternoon with a number of students that came to New York  
9 from the State of Oregon and Washington. It is always  
10 gratifying to be with students. They are aware of what  
11 you are doing in Delaware. They have done a lot of such  
12 work and studies in the Pacific Northwest with a lot of  
13 renewable energy. And these students really understand  
14 the importance of the work that you folks are doing. It  
15 is after all their future. They are very pleased and,  
16 frankly, amazed given how long it took the Pacific  
17 Northwest to get up to speed on renewables that Delaware  
18 is embracing this.

19 So, I wanted to thank you for all of  
20 those efforts, and I am available for all of the specific  
21 agenda items. Thank you.

22 MR. BONAR: From the Public Advocate's  
23 Office, John Citrolo.

24 MR. CITROLO: Thank you. Good morning

0231

1 Madam Chair. Members of the Commission.

2 We would also like to participate on the  
3 issue by issue basis later and possibly add a few.

4 Our comments right now are brief.  
5 Overall, our comments were to hopefully have this RFP  
6 attack a wide array of bidders, including renewables. I  
7 think that is good for competitive purposes, as well as  
8 environmental objectives in the statute.

9 Our primary concern with the way it is  
10 going out, maybe with the statute admittedly, and not  
11 necessarily with the RFP. It seems that we are forced to  
12 try to make the SOS provider look more and more like the  
13 vertically integrated power provider. And I am not sure  
14 we can do that.

15 So, we have concerns about what the RFP  
16 in its current form would do down the road in terms of  
17 price exposure to customers, whether they choose to be  
18 with the SOS provider, or whether they were to choose an

19 alternative supplier. Thank you.

20 CHAIR McRAE: Well, I must say I am a  
21 little surprised. I anticipated more comments, but I am  
22 sure that we will hear further on some of the matters  
23 that have been touched on as we moved through the  
24 proceeding.

0232

1 And at this point, I am going to ask Mr.  
2 Geddes, who is Staff Counsel on this matter to -- the  
3 Commission's counsel -- to give us the format.

4 MR. GEDDES: Good morning, Madam Chair,  
5 Members of the Commission.

6 James Geddes on behalf of the Commission  
7 Staff.

8 The procedure that we would like to  
9 follow today is one that the Commission has used many  
10 times before when there are multiple issues with multiple  
11 parties.

12 And I would suggest the following for  
13 your consideration.

14 First, that the parties who have not  
15 spoken preliminary about their positions have an  
16 opportunity to make a short opening statement.

17 I would then ask that Staff be able to  
18 take care of a few housekeeping matters.

19 And then, proceed through the issues one  
20 by one.

21 I would also caution the Commission that  
22 at the end of the issue sheet, we should allow an  
23 opportunity for those parties who believe there may have  
24 been issues that need to be discussed that have not.

0233

1 The context of the development of the  
2 issue sheet I think is important.

3 As you know, there was a workshop held  
4 here in Legislature Hall on the 18th of August. Written  
5 comments were filed by the end of August. And Staff's  
6 initial report was filed on the 18th with written  
7 comments to that initial report filed on the 3rd of  
8 October.

9 The final report was issued, I believe,  
10 on the 12th, and some parties have not had an opportunity  
11 to comment in writing on the final report.

12 The issue sheet was developed from the  
13 comments that were received on the initial report, as  
14 well as the other materials in the file.

15 And so, we have attempted to capture all  
16 of the issues that we believe parties are concerned  
17 about.

18 But I wanted to note for the  
19 Commission's attention that parties, although they have  
20 had several times to file written comment, have not had  
21 an opportunity to specifically speak to any of the  
22 changes that were made in the final report.

23 So, what I am trying to say is, I think  
24 that in writing, you have had the comments to all of

0234



1 Staff's proposal, except to the extent those proposal  
2 changed in their final report. And there were some  
3 comments, suggestions that Staff in its final report  
4 incorporated in its report and parties' positions may  
5 change as a result of that.  
6 So, that would be my suggestion of how  
7 we proceed.  
8 CHAIR McRAE: Well, let me just be clear  
9 on the issues.  
10 I understand we received a new issue  
11 sheet this morning. And I am not exactly sure what the  
12 changes are. And I gather from what you just presented  
13 that there is the potential that issues are going to  
14 arise now in response to the most recent report that we  
15 received.  
16 MR. GEDDES: I am saying there is a  
17 potential.  
18 CHAIR McRAE: Exactly. I understand it  
19 is a potential.  
20 What I am trying to get to is, capturing  
21 those issues and making sure at the end of the day, if it  
22 is new and it is not on this sheet, then somewhere along  
23 the line we will be needing to keep track of it so it is,  
24 at least addressed in the Commission's actions today.  
0235  
1 So, I'm going to look to this table to  
2 ensure, because I I'm sure the Commissioners, like  
3 Commissioner Winslow is fishing around for something  
4 right now, we may not, with all of the issues on the  
5 table, keep up with what we decided and not decided. So,  
6 I just want to be sure that's recognized.  
7 MR. GEDDES: Yes. And one additional  
8 comment.  
9 There were comments received from the  
10 parties, interested parties to the issue sheet. And we  
11 attempted to incorporate everything that we are aware of.  
12 And I would commend Mr. Howatt for spending all weekend  
13 trying to keep up with various changes that were coming  
14 in and was working on this as late as twelve o'clock last  
15 night. We have attempted to capture everything.  
16 All I am saying is, there maybe a  
17 possibility that at the end of the 18 issues that are set  
18 forth here, there may be a miscellaneous issue that  
19 somebody wants to bring to your attention. That is all I  
20 am trying to highlight. So, that would be the way I  
21 suggest we proceed.  
22 CHAIR McRAE: Also, let me just clarify  
23 with the Commissioners. Some of these issues are  
24 interlinked. It was my thought we might want to hear the  
0236  
1 discussion of all of the issues, and then revisit them on  
2 a decision basis because as we move through this, some of  
3 the discussion and comment may lead us to look at issues  
4 in other ways.  
5 So, unless there is an objection, my  
6 proposal would be that we go through the issues and then  
7 return with our deliberations on them.

8 UNIDENTIFIED AUDIENCE MEMBER: Point of  
9 clarification, Madam Chair.  
10 Would it be possible to get copies of  
11 the most recent version of the issue statement. I do not  
12 have a copy of them.  
13 CHAIR McRAE: I believe so.  
14 Are there other people here who would  
15 like copies?  
16 MR. GEDDES: We attempted to hand them  
17 out before. I apologize if not everyone got a copy.  
18 MR. MONACELL: Madam Chair, is your  
19 proposal not to have deliberations today?  
20 CHAIR McRAE: Oh, absolutely not. I  
21 don't think we will be able to get Mr. Cherry back if I  
22 don't do it today.  
23 What I am suggesting is, a lot of these  
24 issues are intertwined. So I am a little concerned if we  
0237  
1 decide Issue 1, and then we come to two and have a whole  
2 different prospective, or three, based on what alters  
3 two, that there might be some benefit in going through  
4 the process. And then at the end of the discussion,  
5 going back and looking at the issue, sorting out the  
6 questions and getting the inputs. And I might say, this  
7 is only my thought on the matter. As I looked at the  
8 issues, I see linkages. I certainly am going to leave it  
9 open to the Commissioners if they feel this could be  
10 managed differently, I would welcome their input.  
11 COMMISSIONER CLARK: I would agree,  
12 Madam Chair. A lot of times, we go through these, and  
13 you are covering some things on one of the issues -- the  
14 big picture on the end. I think we ought to vote on the  
15 end.  
16 CHAIR McRAE: With that being said, I  
17 believe that Mr. Geddes indicated that for those persons  
18 involved in this docket who did not make opening  
19 comments, that this would be an opportunity for you to  
20 speak before we begin to address the issues. And then, I  
21 will ask Mr. Geddes to present the issues one by one as  
22 you got it on the issue sheet. Is that okay? I see that  
23 expression, Mr. Geddes.  
24 MR. GEDDES: As long as Staff gets an  
0238  
1 opportunity to have an initial comment.  
2 CHAIR McRAE: Of course, you did not  
3 comment earlier. I was aware of that.  
4 Now, if we might proceed with parties  
5 other than Staff. The Public Advocate, I assume that was  
6 your preliminary comment, so we will of the other  
7 parties, and that will be followed by Staff.  
8 MR. WILSON: Good morning, Madam Chair,  
9 Commissioners, and Mr. Cherry.  
10 For the record, my name is Anthony  
11 Wilson. I am associate general counsel for Delmarva  
12 Power and Light.  
13 I am joined here today by Mr. Tom Shaw,  
14 Executive Vice-president for PEPCO Holdings and CEO of

15 Delmarva Power.

16                   Additionally, I am joined by Mr. Mark  
17 Finfrock, director of risk management, and Anthony  
18 Kamerick, who is the treasurer of PHI. They are all here  
19 to assist in answering any of the questions that this  
20 Commission may have.

21                   At this time, Mr. Shaw will make the  
22 company's opening statement.

23                   MR. SHAW: Good morning, Madam Chair,  
24 Members of the Commission and Mr. Cherry.

0239

1                   For the record, as Anthony mentioned, my  
2 name is Tom Shaw. You have my title and card.

3                   I am appearing today to make a short  
4 opening statement before I turn things back over to  
5 Anthony, the company's legal counsel, on this process.  
6 And he will provide more specifics during the course of  
7 your deliberations today.

8                   At a high level, I want to express  
9 Delmarva's very real and significant concerns with the  
10 independent consultant's reports, the IC reports.

11                   The initial report that was issued  
12 September 18, 2006, the request for proposal and term  
13 sheet, mark up issue September 27, 2006 and the final  
14 report issued October 12, 2006 in this proceeding.

15                   At the outset, Delmarva wishes to  
16 emphasize it supports both the integrated resource  
17 planning and the request for proposal concept as  
18 established by House Bill No. 6 as codified to Title 26  
19 of the Delaware Code.

20                   In fact, the company already utilizes an  
21 RFP process to procure energy supply for standard offer  
22 service customers pursuant to various Delaware Public  
23 Service Commission Orders issued in Docket No. 04-391.

24                   However, as more fully set forth in

0240

1 Delmarva's comments to the IC's report, incorporated  
2 herein by reference, Delmarva has identified several  
3 areas of critical concern with the IC's report and  
4 recommendations to this Commission.

5                   Among other things, Delmarva has the  
6 following concerns. Many of the IC's recommendations are  
7 meant to solicit a large number of bidders.

8                   As indicated in the IC's final report,  
9 the IC's assumption is that after these bids are  
10 reviewed, they can be thrown out later if they are not in  
11 the best interest of the customer.

12                   Delmarva Power's approach has been to  
13 assure that we protect our customers and be clear with  
14 potential bidders about what Delmarva feels are  
15 acceptable criteria for our customers.

16                   We feel this is a more straightforward  
17 approach that respects the time and effort of potential  
18 bidders, and most importantly protects the interest of  
19 our customers.

20                   It is important to remember as of today,  
21 our customers only pay for firm energy that is needed and

22 have no exposure to generation risk.  
23 The IC's report would have Delmarva  
24 purchase more power than its customers would need. A

0241

1 fatal flaw in the IC report is that it fails to  
2 appropriately match the enter needs and load requirements  
3 of the SOS customers, the size of the megawatt block to  
4 be procured. 350 to 400 megawatts is far in excess of  
5 the company's customers forecasted need and out of  
6 compliance with the legislation that requires at least 30  
7 percent of SOS customer energy needs to be procured from  
8 the market by a competitive bidding process. And that  
9 Delmarva develop a diverse portfolio of resources.

10 Slide one, which we also have a chart up  
11 here, illustrates that if Delmarva was to procure 400  
12 megawatts, this is attached to your packet, as well for  
13 those have who have the testimony, if Delmarva was to  
14 procure 400 megawatts based on the projected usage, the  
15 energy supply would exceed that needed to serve the SOS  
16 load in excess of approximately 40 percent of the time.

17 In those times, Delmarva under the IC's  
18 proposal, would be forced to sell the excess into the  
19 market.

20 Slide two illustrates that hourly SOS  
21 load can be volatile and sourcing energy predominately  
22 from a single generating source with limited ramping  
23 capabilities does not fit the hourly usage pattern of  
24 Delmarva's SOS customers.

0242

1 The IC's report suggestion that Delmarva  
2 sell any excess energy resulting from a long-term  
3 contract that would have the company engage in  
4 speculative trading in a volatile market.

5 This is something that Delmarva does not  
6 do today and such speculative activities in recent year  
7 lead to many other corporate financial losses.

8 To project our customers Delmarva finds  
9 it totally unacceptable to rely on such an obviously  
10 flawed practice that could result in a loss that would  
11 need to be recovered on a dollar to dollar basis from our  
12 customers.

13 Very significantly, the IC report does  
14 not take into account the considerable risk and exposure  
15 that customer migration adds to the creation of long-term  
16 energy contracts.

17 As far as I know, Delaware is the only  
18 state in the country that has customer choice and  
19 proposes procuring energy and capacity from a long-term  
20 contract for new generation.

21 Theoretically, if a long-term contract  
22 is above market, all of Delmarva's SOS customers who are  
23 always Delmarva's distribution customers could select an  
24 alternative energy supplier and the entire burden of that

0243

1 contract would fall upon Delmarva's distribution  
2 customers, basically, requiring them to pay double  
3 through distribution rates for energy and capacity they

4 neither need, nor want.

5 This is real since December 31, 2005,  
6 over 60 percent of Delmarva's commercial customer load  
7 and almost 2,000 individual residential customers left  
8 SOS supply. So it is happening.

9 The IC report fails to recognize or  
10 address the complex relationship between bid block size,  
11 corporate structure, security requirements and the risk  
12 for financial performance default that would be borne by  
13 Delaware customers.

14 Making the bids larger and more  
15 concentrated, as recommended in the IC report, creates  
16 greater risk for the customers.

17 The IC report changes the credit and  
18 security requirements initially specified by Delmarva.  
19 This recommended change completely ignores and discounts  
20 recent company and industry experience with bankrupt  
21 counterparties. And it generally ignores the need to  
22 protect the customers of Delmarva from these very real  
23 and substantial risk.

24 These risks include finding replacement

0244

1 power due to either a performance or contract default can  
2 be very experience.

3 For these reasons, the recommended  
4 changes should not be adopted.

5 The company is also concerned that the  
6 IC's report, if adopted, would shift financial and  
7 economic burdens that are most properly assigned to  
8 energy suppliers to all of Delmarva's electric customers  
9 by advocating high volume and high risk long-term  
10 contract. The IC report underestimates the risks that  
11 Delmarva customers will be exposed to under a long-term  
12 contract.

13 Nowhere in the IC report is there any  
14 analysis or substantive documentation of the benefits  
15 that Delmarva customers will supposedly receive from such  
16 a contract. Instead, at the expense of customers, the IC  
17 report is focused on providing many market projections  
18 that benefit developers.

19 In addition, as stated in our field  
20 comments, the posted collateral from bidders is based on  
21 Delmarva's best estimate and may not be sufficient to  
22 completely cover exposure, thereby leading to  
23 under-collateralization and higher financial credit risk.  
24 This risk is absolutely compounded by the below

0245

1 investment rate counterparties that are, according to  
2 Moody's, ten times more likely to default than investment  
3 grade counterparts.

4 There are many examples of electric  
5 customers in other jurisdictions that have been forced to  
6 absorbed cost of long-term contracts due to  
7 miscalculation, forecast error, or unanticipated market  
8 events.

9 For these reasons, the company strongly  
10 objects to the portions of the IC's report.

11                   While supporting the mandate of House  
12 Bill No. 6, Delmarva seeks to carry out the mandate  
13 without exposing SOS customers, distribution customers or  
14 the company to the aforementioned risk.

15                   RFP filed on August 1, 2006 by Delmarva  
16 is consistent with the many provisions of House Bill 6  
17 and provides the needed protection for distribution  
18 customers and the company.

19                   As noted above, we are confident that  
20 the requirement, terms and conditions of our original  
21 proposal are viable and practical. That confidence comes  
22 from the fact we have been procuring firm energy for our  
23 SOS customers in a number of jurisdictions through  
24 competitive bid processes, and we are familiar with the

0246  
1 products and services of the wholesale supplier will  
2 provide.

3                   That concludes my time.

4                   CHAIR McRAE: Thank you, Mr. Shaw. Let  
5 me just say, our timekeeper was nodding.

6                   I am asking for commentors, in fairness  
7 to the other commentors, who are also participating in  
8 this proceeding, and this is my fault, perhaps, for not  
9 clarifying it. I am asking you to also stay with the  
10 three-minute limit, with the understanding that you will  
11 have an opportunity to speak to each of the issues that  
12 are going to be covered today.

13                   So, the other parties that did not speak  
14 previously and want an opportunity to speak.

15                   MR. FIRESTONE: Madam Chair.

16                   CHAIR McRAE: Well, you did offer brief  
17 comments, Mr. Firestone, in your opening? You seeking  
18 another opening comment?

19                   MR. FIRESTONE: All I really wanted to  
20 do is thank the Staff, really, for a super job of really  
21 meeting the parties needs as best they could. I will  
22 withhold, as I said, withhold my remarks until we talk  
23 about issue by issue. I did put in extensive comments.  
24 Thank you, Madam Chair.

0247  
1                   MR. WILSON: Your Honor, what the  
2 company was striving to do was to respond to your request  
3 which was to frame the issues. Because all of these  
4 issues are interrelated. It is not your typical  
5 proceeding where you can go one by one and make separate  
6 decisions. These things all tie together.

7                   The way we look at it there are three  
8 core issues that tie together. And those core issues  
9 relate to the bid block or the megawatt size that is  
10 going to be procured. It relates to credit and security  
11 requirements that are needed to protect the customers  
12 here in Delaware. And it relates to whether the contract  
13 is going to be for firm deliver of energy, or it's going  
14 to be tied to a specific plant.

15                   Those are overriding issues that tie  
16 everything together. And Mr. Shaw's comments wanted to  
17 just drive home the point that this is not an issue by

18 issue matter. They tie together, because if you have a  
19 large bid block and don't have the appropriate credit  
20 protection, you are headed for a situation that the  
21 company has already experienced where you get into a  
22 Mirant type situation, and you are lectured by the FERC  
23 for saying, it was a business judgment that you made, not  
24 to have appropriate credit protection in place.

0248

1 We don't want that to happen again. We  
2 don't want the customers to be exposed to a loss that  
3 they don't currently face.

4 We just want to remind the Commission,  
5 and I say that the purpose of House Bill 6 was to benefit  
6 the customers. The customers' interest sometimes are  
7 diametrically opposed to that of a marketer. A  
8 marketer's interest is to sell power. A customer's  
9 interest, and House Bill 6 spells it out, is to acquire  
10 power that is sufficient to meet the needs and it's  
11 diversified and supplied along with some other  
12 requirements.

13 There is nothing in House Bill 6 that  
14 says do everything just to get bids. And for the  
15 company, we would not issue an RFP that we did not think  
16 could help the customers in terms of the terms and  
17 conditions. We don't issue an RFP in bad faith thinking  
18 we are going to throw out the potential bidders.

19 So, we were quite surprised during  
20 discussions to hear that kind of -- you know -- to have  
21 that discussion.

22 We firmly believe that if the RFP is  
23 issued, it has to be something that when you get bids  
24 that meet the task, we can all live with it.

0249

1 CHAIR McRAE: Thank you, Mr. Wilson.  
2 And I will acknowledge that that was two bites at the  
3 apple for Delmarva. I did not, in fact, interrupt  
4 Mr. Shaw because I fully do appreciate, for one, I did  
5 not give the clearest instruction here. And  
6 additionally, I am fully aware of the concerns that have  
7 been raised by Delmarva, and I am willing to allow  
8 articulation on that.

9 Clearly, you have had maybe 10 minutes  
10 now. But if we can proceed now, we have Staff, unless  
11 there is some other party, I am saving Mr. Geddes for  
12 last. Is there someone else in the matter who did not  
13 have an opportunity to comment at the opening? If not, I  
14 will ask Mr. Geddes to give his comments at this time.

15 MR. GEDDES: Madam Chair, does that mean  
16 I get 10 minutes? I will try to be brief.

17 Madam Chair, Members of the Commission.  
18 I would like to take this opportunity first to thank,  
19 with great appreciation, Barry Sheingold and Wayne Oliver  
20 of New Energy Opportunities, Inc., and Merrimac Energy  
21 Group, Inc., and their team.

22 I think every member of the Staff feels  
23 that the effort that they put in on these short  
24 turnarounds was outstanding. And I think the quality of

0250

1 the product, whether you agree with its conclusions or  
2 not, I don't think you can disagree that it's a lot of  
3 hard work and very well done.

4 But getting to the issues that you need  
5 to decide today. I think it is clear what the  
6 Commission's responsibilities are and the other state  
7 agencies because they are set forth in the statute.

8 And if you have questions today, I would  
9 suggest that you go back and revisit Section 1007,  
10 because I do think it does provide the Commission with a  
11 path forward in terms of how it should try to proceed.

12 Now, it is clear from the comments of  
13 Mr. Shaw, on behalf of Delmarva, and from reading the  
14 issue sheet and the materials that we have submitted that  
15 had there's two conflicting or disparate views as to how  
16 this bidding process should be started.

17 To use the analogy of an election, I  
18 think Mr. Sheingold was the one who suggested this to me  
19 yesterday. We are in the process of trying to determine  
20 what the rules should be for a fair election. We are not  
21 holding the election today.

22 And I think that Mr. Shaw in his  
23 comments, perhaps, suggest that the election is being  
24 held today because he is suggesting that if we allow this

0251

1 proceed to go forward, the results will be as he  
2 articulated them.

3 Now, we disagree with his conclusions.  
4 But we also disagree that's not where we are in the  
5 process. Where we are in the process is trying to  
6 determine what the ground rules are going to be. Not  
7 what the ultimate decision will be. That is to occur in  
8 February. All we are trying to do is create some  
9 criteria, consistent with a statute so that an RFP can be  
10 issued.

11 Now it is clear that Staff and its  
12 consultants have a different view of how to protect or to  
13 improve the interest of the citizens and the customers of  
14 Delmarva who take SOS service.

15 Delmarva is very precise in its attempt  
16 to conscript, limit, and otherwise fashion this RFP so  
17 that the door that is open is just open a crack. And  
18 that the bidder who hopefully is out there will have to  
19 meet all of these criterias in the first instance.

20 Staff, obviously, takes a different  
21 position. It is like a funnel. We are interested in  
22 having a large response to this RFP. We are fishing with  
23 a much broader net.

24 Now, there is possibly a risk that there

0252

1 will be some bidders who respond who will be disqualified  
2 because the size is too large, the credit is not  
3 sufficient for lots of evaluation issues, which, as you  
4 know, will take place between the time the RFP issues in  
5 November and when you decide this in February.

6 So, I think it's clear that we have a



7 different point of view. And Staff believes that its  
8 prospective in trying to broaden the net, if you will,  
9 and to allow as many potential bidders to participate in  
10 this process, and then through the evaluation process  
11 what is the most appropriate bid is the way to go, rather  
12 than narrowing the focus in the beginning and having the  
13 prospect that no one will be able to bid. And I think  
14 that is a clear difference in terms of our approach.

15 So, we would suggest that a broader  
16 approach at this point is the appropriate way to proceed.  
17 And as we go through these issues, you will see why that  
18 reason I think is persuasive. Thank you for your time.

19 I have some housekeeping matters.

20 CHAIR McRAE: Please.

21 MR. GEDDES: If I might, with your  
22 permission.

23 One housekeeping item that I would like  
24 to deal with now, and that is trying to establish

0253 1 information for the record.

2 As you know, most of the materials that  
3 have been generated in this docket have been put up on  
4 the website.

5 But for purposes of making a record, I  
6 would like to now ask the Commission to consider entering  
7 a series of exhibits. There will 36, and what I would  
8 like to do is ask Mr. Howatt if he would give you a copy  
9 of this exhibit list.

10 I do not plan to go through each one of  
11 them. I will tell you that all of the exhibits, with the  
12 exception of Exhibit 3 and 4 are up on the website and  
13 have been made available to the public.

14 But for purposes of establishing this  
15 record, I would like to have the Commission consider this  
16 list. And in addition, I would like to include Exhibit 3  
17 and Exhibit 4 that are on this list, which are the  
18 notices of the hearing today and a notice of the workshop  
19 August 18th. Those two notices are not up on the  
20 website. But every other exhibit that is listed on this  
21 sheet, or these two sheets has been made available on the  
22 Commission's website.

23 So, for purposes of establishing the  
24 record in this proceeding, I would like to move the

0254 1 admission of Exhibits 1 through 36 at this time.

2 CHAIR McRAE: Are there any objections?  
3 If not, the log is admitted, the exhibits that are listed  
4 in the log.

5 MR. GEDDES: Thank you, Madam Chair.

6 CHAIR McRAE: With all of that said, we  
7 are now at the point where we will address issues. I  
8 don't know that we need a framing, but to the extent that  
9 the list is a little bit fluid, I am going to ask  
10 Mr. Geddes to just speak to what we are talking about  
11 with respect to Issue 1. I see the positions of the  
12 parties listed here. But I am also going to give you an  
13 opportunity to comment on the issues for the benefit of

14 the Commission and Mr. Cherry.

15 MR. GEDDES: Madam Chair, Members of the  
16 Commission.

17 What I would suggest, as we go through  
18 these issues, is that to the extent a parties' position  
19 is set forth on the sheet, I do not think that they need  
20 to further elaborate. However, to the extent that they  
21 feel that the position is not correctly set forth,  
22 perhaps, they would need to make some brief remarks.

23 But with regard to framing the issue, I  
24 agree with Mr. Shaw and Mr. Wilson that many of these

0255 1 issues are interrelated. And I believe the Commission's  
2 approach in waiting until all of the issues have been  
3 discussed is an appropriate one.

4 The preliminary comment with regard to  
5 the legislative prospective goes to my opening remarks  
6 and Mr. Shaw's opening remarks.

7 We see things differently. The company  
8 is quite interested in having a small size unit. Having  
9 the bidder be investment grade, and it be firm capacity  
10 and not unit specific. As I said, we believe that will  
11 narrow the bidders who have those criteria.

12 We think a better way to move forward is  
13 to include 200 megawatts or up to 400 megawatts. To have  
14 investment grade and noninvestment grade. And to allow  
15 people, if they want to bid firm power, or unit specific,  
16 to have the choice. But not to limit it as the way the  
17 company suggest.

18 We do think that is consistent with  
19 legislation. Because if you look at the legislation,  
20 remember I suggested that is your load star, there is no  
21 discussion about unit size, financing arrangements, or  
22 other criteria. It's about developing resources,  
23 long-term resource with certain evaluation criteria set  
24 forth. And I would suggest that that approach is more

0256 1 consistent with the legislative prospective.

2 COMMISSIONER WINSLOW: Madam Chair. Mr.  
3 Geddes, I hear you. I think you have an excellent point.

4 My reading of Section 1007 that you  
5 directed me to, Section 1, indicates to enter into short-  
6 and long-term contract.

7 CHAIR McRAE: Excuse me, Commissioner  
8 Winslow. Speak into the mic.

9 COMMISSIONER WINSLOW: I apologize. The  
10 statute indicates under 1007(b)(1) that they enter into  
11 short- and long-term contracts with a procurement of  
12 power necessary to serve its customers.

13 Now, I understand that, obviously, they  
14 would not enter into contracts in excess of what they  
15 need, correct? So why would we be looking for bidders to  
16 bid on something that they would not be considering?

17 MR. GEDDES: Again, I think, this  
18 involves judgment, and people can disagree when people  
19 employ judgment.

20 I think from our prospective that

21 Delmarva has taken the worst-case scenario, or the  
22 conservative case scenario. Large migration. And the  
23 fact that their load growth will be almost static.

24 We take a different prospective that

0257

1 their large growth will be larger than they believe it to  
2 be. And historic migration for residential and small  
3 commercial is not reflected in commercial customers. I  
4 believe that Mr. Shaw said that they have 2,000 customers  
5 from the residential and small commercial migrate and 50  
6 some percent from the larger customer classes.

7 We have in our calculations included a  
8 potential of 15 percent migration. We still think that  
9 the unit is sized appropriately.

10 But, again, that may be through the  
11 evaluation process the determination is made that 200 is  
12 the right size or 300 or something in between. The  
13 question is now, we are not resolving this issue today on  
14 the proper size. All we are saying is, just don't close  
15 the door here when there may be some legitimate  
16 disagreements about what the load growth is going to look  
17 like and what the migration rate will be.

18 If you take Delmarva's argument, that is  
19 their conservative case. That may be wrong. If it is  
20 wrong, then the unit is going to be undersized.

21 Our case, on the other hand is, we will  
22 include larger bidders, perhaps, and we are also trying  
23 to reflect comments about the realities of the commercial  
24 marketplace.

0258

1 You will hear from NRG about commercial  
2 size and what is financeable and what's not. What we are  
3 trying to say is, why don't we take a broader approach  
4 now, and as we get through the evaluation period, make  
5 sure that these numbers that Mr. Shaw has thrown out this  
6 morning are ones we can agree with or disagree with and  
7 bring that disagreement to you in the evaluation process.

8 CHAIR McRAE: I have a follow up and  
9 then we will go to Commissioner Clark.

10 I have difficulty appreciating whether  
11 if we go through this larger size supply issue, are we  
12 encouraging bidders or endorsing the fact that at some  
13 point -- and I heard what you said about taking a big  
14 picture and then refining it. But I'm not still clear on  
15 the process of how we will determine.

16 From what I read I think it was NRG and  
17 Bluewater maybe, it was stated well, it is a nonstarter  
18 if we are talking less than a certain number. And if  
19 that's the case, and we ultimately might end up with  
20 another number, are we engaging a fantasy, and maybe not  
21 because there may be lacking data.

22 But I do think that is the point  
23 Commissioner Winslow was trying to reach, and it is one I  
24 am still struggling with about how this refinement

0259

1 process occurs.

2 MR. GEDDES: I think it occurs in the

3 evaluation of the bids, based on the various criteria  
4 including price and nonprice factors. It is 1,000  
5 megawatts. We are talking about the difference between  
6 200 and potentially 400. But there is 1,000 megawatts  
7 that needs to be served.

8 Now the statute, how do I say this  
9 carefully, I believe the statute one could make the  
10 argument that 30 percent of it should be market based and  
11 the other 70 percent should be subject to other  
12 arrangements.

13 Remember, this plant, if there is one  
14 that is accepted, will not be coming on line for several  
15 years, probably. There will be load growth. And there  
16 is a potential, certainly, for migration, but we don't  
17 think that sizing this this way is going to, at this  
18 particular point, cause any prejudice.

19 CHAIR McRAE: Commissioner Clark.

20 COMMISSIONER CLARK: I have a question.  
21 Really, I think it's probably more targeted to Delmarva  
22 along with what Mr. Geddes was saying.

23 Can you articular for me what the  
24 prejudice would be in setting the maximum contract size t

0260

1 400, or 350, or 450, when in February there are going to  
2 be more agencies involved in evaluating whether or not  
3 these bids are going to meet our long-term needs. I  
4 guess the question is whether we need to decide today  
5 what is going to happen, what is going to be appropriate,  
6 or get the maximum amount of bids available.

7 MR. WILSON: Commissioner, it goes to  
8 the core integrity of the bid process. If you are going  
9 to set up a process where you are not going to really  
10 consider bids that come in and you are planning to kick  
11 them out, that is one thing.

12 What we are trying to do is set up a  
13 process to get bids that are sufficient to meet the load  
14 for SOS customers and don't make Delmarva a power  
15 marketer. We are not in the business of taking excess  
16 power anymore and placing it back to the market.

17 As the charts were demonstrating, 49  
18 percent of the time we would be in that position, which  
19 means that 49 percent of the time customers are going to  
20 be oversupplied and overpaying for purchase.

21 If the market starts to drop, if you got  
22 a 10 percent drop, customers are going to be paying  
23 almost 144 million dollars more than the market price.  
24 If you get a 20 percent price drop over a 25-year

0261

1 contract, customers will be looking at 288 million  
2 dollars. If you get a 30 percent price drop over that  
3 same 25-year percent, your net present value, your  
4 customers will be exposed to almost 432 million dollars  
5 in excess payment because of the inherent inflexibility  
6 of the process.

7 I understand that it said, Well, we're  
8 setting up for election. This is the election. This is  
9 a 90 percent Republican district. You win the primary,

10 you win the election. What we are trained to do is get  
11 it right the first time out. We have already experienced  
12 an eight percent customer shift. We are halfway to that  
13 15 percent.

14 So, the projections Delmarva uses,  
15 relying on historic information, put us in a pretty solid  
16 position. There is a lot at stake. They put a lot into  
17 the process. But if the numbers are wrong, the  
18 independent consultants don't suffer financial loss. The  
19 customers suffer. The company's suffers. And the State  
20 of Delaware's economy suffers.

21 COMMISSIONER CLARK: Along those lines,  
22 they are all good and important arguments.

23 CHAIR McRAE: Commissioners Clark, for  
24 my benefit and the audience, speak into the mic.

0262

1 COMMISSIONER CLARK: Those are all good  
2 and important considerations that we have to chew on. My  
3 question is, how can you articulate what the prejudice  
4 would be on chewing on that meal in February as opposed  
5 to now?

6 MR. WILSON: Well, the RFP sets up the  
7 rules. If you will ignore the rules in February, what is  
8 the point of having the RFP. What you are saying  
9 essentially is, it does not matter what the RFP says  
10 because in February we will be free to decide anything  
11 else.

12 COMMISSIONER CLARK: Maybe I am askew.  
13 It seems you could have somebody bidding at a 400  
14 megawatt PPA and you could have somebody doing it at 200  
15 or 100. Trying to get smaller bidders. We are not  
16 necessarily committing ourselves if we approve a maximum  
17 contract size at 400 megawatts, we are not committing  
18 ourselves to do it in February.

19 MR. WILSON: You are getting a lot of  
20 bids. Remember, this is a very compressed time frame.  
21 All of those bids have to be given time. They all have  
22 to be analyzed. They all have to be processed. You get  
23 a bunch of bids that are so far outside of the scope,  
24 they don't serve the SOS needs. They are so far beyond,

0263

1 they are going to get eliminated at some point. But you  
2 can't prejudge them and throw them out.

3 As opposed to getting tailored bids that  
4 fit the need, that fit the profile that are consistent  
5 with what House Bill 6 mandates. So, we are trying to  
6 get things that are closer to the mandate of House Bill  
7 6, as opposed to just getting bids. Just getting bids is  
8 a meaningless process. Getting bids that reflect the  
9 need and will serve the SOS load, that is the goal.

10 COMMISSIONER CLARK: Madam Chair, just a  
11 couple of more questions. Just one thing, I appreciate  
12 the concerns and what we are talking about in the end  
13 locking in long-term contracts. Intuitively when we got  
14 generation here in the State, you would think that that  
15 would be less expensive, but there are a lot of stranded  
16 cost risk, for instance, that go along with that. I

17 appreciate that. I am trying to work through that  
18 myself.

19 Just a couple of questions with regard  
20 to your estimated load curve for 2013, slide number one.

21 Just one issue, of course, we are  
22 required to make sure whatever happens at least 30  
23 percent of the supply comes from the wholesale market.

24 Under this load curve here that would

0264

1 not be an issue; would it? The 30 percent would be  
2 covered?

3 MR. SHAW: Actually, slide one does not  
4 include 30 percent. If you put that 30 percent in there,  
5 the percentage of time that the excess is in place goes  
6 up. So, you are right in regard to the 30 percent SOS  
7 bid requirement. It is not included. So, in essence, it  
8 makes it --

9 COMMISSIONER CLARK: Just in this area  
10 up here where demand is over the 400, that would be  
11 enough to cover 30 percent under this scenario?

12 MR. SHAW: Up there where the demand is  
13 higher. But look at the percentage of time when that  
14 exist.

15 I want to correct something that  
16 Mr. Geddes said. The load for this segment of customers  
17 is 1,000 megawatts. It's less than one percent of the  
18 time. Most of the time, you look at 50 percent plus.  
19 Plus the load is significantly less. That is the whole  
20 point of this chart. That is why sizing is important.

21 Another thing I would add to your  
22 earlier question. Bidders need to know what they are  
23 bidding on to submit good bids. To leave it too wide  
24 open you are going to get all kinds of bids that are not

0265

1 necessarily pertinent to what we really need.

2 COMMISSIONER WINSLOW: Madam Chair.

3 CHAIR McRAE: Yes.

4 COMMISSIONER WINSLOW: Thank you, Madam  
5 chair.

6 I think I hear your answer to  
7 Commissioner Clark is that among other things, and the  
8 last point made by Mr. Shaw, as well, this might bring in  
9 a lot of bids that you will have to evaluate. A large  
10 portion of them or some portion of them will be  
11 overcapacity, and, therefore, at the end of the day, you  
12 are going to reject them and it will put a big work load  
13 on Delmarva Power and Light. I think it would be a  
14 consideration we have to make.

15 But it seems to me there are a lot of  
16 knowledgeable people in this room. And there is a  
17 website that has all of the issues on it. And we were  
18 publicly discussing this issue at this moment. It  
19 strikes me that any knowledgeable person who is about  
20 ready to make a bid on a project like this would have to  
21 take into consideration before that bid was made what  
22 Delmarva Power and Light has to say about its capacity  
23 and what it is going to do in terms of entering into some

24 sort of a long-term contract.

0266

1 So, don't you think with the public  
2 nature of this discussion and discourse it is really  
3 going to reduce the chance that you're going to get a  
4 large number of bids that are really not appropriate.

5 CHAIR McRAE: I wish that were so.

6 But I do believe, Commissioner Winslow,  
7 that some of the direction coming from the Commission  
8 today may, and why I think are deliberations are so  
9 important, I think there maybe some reliance on whatever  
10 numbers we settled on, if any. And so, we probably need  
11 to be very clear as to what that means, when we are  
12 deciding the issues.

13 COMMISSIONER WINSLOW: I concur with  
14 that, Madam Chair. But I will then go back to what I  
15 quoted to Mr. Geddes before, which is it was part of the  
16 legislative intent here, in my opinion is, that this  
17 program is to provide the necessary power commitment for  
18 the future for customers, not the unnecessary procurement  
19 of power.

20 CHAIR McRAE: Mr. Citrolo.

21 MR. CITROLO: I would like to briefly  
22 give our prospective on one of the questions Commissioner  
23 Clark had and preface that with, first, I want to thank  
24 Mr. Padmore for assigning me to this case. I did not get

0267

1 my revenge until yesterday, when we discussed this, and I  
2 told him there were some positions and issues that we  
3 would be relying with the company on, DP&L. And as you  
4 can see, I did talk him in off the ledge of his office.

5 One of those issues, with all due  
6 respect to Mr. Geddes is, for us, anyway, the people, the  
7 election process is today. We are not on the committee  
8 reviewing these bids down the road. And the more  
9 uncertainty we leave here with today, the more  
10 anticipation we will have on what happens then.

11 And, especially, with the price impact,  
12 the risk of that, to consumers. And hopefully that gives  
13 a prospective to Commission Clark, maybe not a direct  
14 answer to the question.

15 And in response to Commissioner Winslow,  
16 that is the same position that we take. The SOS process,  
17 being designed as a integrated utility does pose  
18 problems. It is not the days where you procure from  
19 yourself for your customers. Excess capacity or excess  
20 energy supply is going to have to be paid for. And looks  
21 as though, given the SOS statute, that will be paid for  
22 by the customers. Thank you.

23 MR. MANDELSTAM: Madam Chair, is it out  
24 of order to ask a question about this exhibit?

0268

1 CHAIR McRAE: No. You certainly may.

2 MR. MANDELSTAM: Thank you, Madam Chair.

3 Wind developers, such as Bluewater and  
4 fossil developers spend a great deal of time working with  
5 utilities to try to understand their load needs.

6 Obviously, it is a very collaborative dance. We want to  
7 understand what they need. We want to try to provide it.  
8 So, in that spirit I am trying to  
9 understand slide one. I have a few questions at the  
10 beginning.

11 It is my understanding from the  
12 consultant's report that the Delmarva road, as of October  
13 2004 through September of 2005 was, in fact, 1,028  
14 megawatts, which seems to be the 2013 load. And I know  
15 that the consultant and the Staff asked for load growth  
16 over the next 10 years. But, in fact, developers, such  
17 as myself, are interested in load growth up to 2037,  
18 which is the end of the period of time. So, I am trying  
19 to understand what is the true picture. What do they  
20 really need between now and 2037, which is what the  
21 legislation intended.

22 Furthermore, I am confused about the  
23 curve because one can read graphs a lot of ways. If  
24 there is an excess supply on the right, there is a

0269  
1 deficit of supply on the left, if I am reading it  
2 correctly, Madam Chair. 49 percent of the hours, in  
3 fact, there is less supply than the demand because under  
4 the curve there is a deficit. Perhaps, I am reading  
5 incorrectly. I think we should try to understand what  
6 Delmarva system needs are because that's the best way you  
7 can get a responsive bid.

8 CHAIR McRAE: Put that slide up again,  
9 and if a representative from Delmarva could respond.

10 MR. FIRESTONE: Madam Chair, not all of  
11 us have copies of this slide.

12 CHAIR McRAE: But I do believe what is  
13 being referred to -- was that not one of the slide you  
14 included?

15 MR. SHAW: Yes.

16 MR. FIRESTONE: At the angle it was  
17 earlier, we could not see it.

18 CHAIR McRAE: We are going to ask it be  
19 angled better, as well.

20 MR. MANDELSTAM: Madam Chair, my first  
21 question is the load. The consultant report seems to  
22 indicate this is the load in 2005. But this graph  
23 indicates the load in 2013. And the real question is  
24 what is the load growth between 2013 and 2037, which is

0270  
1 the period of time under the legislation.

2 MR. FINFROCK: I am Mark Finfrock. I  
3 will respond to that question.

4 MR. MANDELSTAM: I'm sorry. I can't  
5 hear you.

6 MR. FINFROCK: My name is Mark Finfrock.  
7 I will respond to your question.

8 With respect to the slide, it reflects  
9 the load growth. It reflects the load of 2005 growing at  
10 an average two percent rate into 2013. So, that is what  
11 the load would look like, and the load curve would look  
12 like with respect to load need in 2013, assuming a two



13 percent growth, which is what our internal projections  
14 are.

15 As far as load growth beyond 2013, we  
16 have not projected out further than 2016 at this point in  
17 time. We would assume additional two percent through  
18 2016. But recognize you would need well over double  
19 digit growth rates to achieve -- to eliminate that yellow  
20 color on that chart. A significant amount of growth  
21 would be required.

22 MR. MANDELSTAM: Explain to me on the  
23 left side of the chart -- this chart is simplified -- I  
24 understand you have other sources of generation. But for  
0271

1 those of us in the audience, it appears that there is a  
2 deficits for 49 percent of the hours of the year.

3 MR. FINFROCK: That's correct. We do  
4 not have other generation. We will source that deficit  
5 whenever it occurs through, an obligation of the  
6 legislation, of 30 percent sourcing through the bid  
7 auction process, which is a requirement.

8 And in our integrated resource file that  
9 we will file at year end, we will identify the most cost  
10 effective way to service all of the load.

11 MR. MANDELSTAM: I appreciate that.  
12 Perhaps I misheard the earlier testimony of the Chairman  
13 and CEO.

14 He said you did not go into the market  
15 to trade but, in fact, you do.

16 MR. FINFROCK: As of today, we procure  
17 all of our power needs through our SOS auction. And we  
18 procure just the amount that is required. It is through  
19 firm energy contracts and the suppliers take the risk of  
20 the usage of our customers.

21 MR. MANDELSTAM: But what you are  
22 suggesting is in the future you will be going into the  
23 market to procure that deficit on the left?

24 MR. FINFROCK: It depends on what our  
0272

1 integrated resource plan identifies as the most  
2 appropriate means of serving our load.

3 If we decide it is all firm energy we  
4 should procure through an auction process, we would not  
5 have any risk of overprocuring or underprocuring. That  
6 is a possibility.

7 If we procure energy from a specific  
8 generation unit, when we don't know how that unit is  
9 going to run in the marketplace, we would likely have to  
10 rely on the spot market or near term market to fill the  
11 void when that generator does not run. We would be more  
12 likely be into the speculative energy market if we relied  
13 significantly on a single generator that does not follow  
14 our load the way our load looks.

15 MR. MANDELSTAM: Sorry, Madam Chair.

16 CHAIR McRAE: There may be opportunity  
17 for further comment.

18 But I particularly want to give the  
19 Commissioners an opportunity to further speak on this. I

20 see Commissioner Clark, and I myself have a question or  
21 two.

22 COMMISSIONER CLARK: I just want to know  
23 can any of the participants that could articulate for me  
24 why this potential excess supply shown in this chart does

0273 1 not represent a significant risk to the company? I mean,  
2 that is a concern I have. I would like someone to  
3 address that.

4 MR. GEDDES: Madam Chair. May Staff  
5 address that.

6 CHAIR McRAE: Please.

7 MR. GEDDES: I would ask Mr. Sheingold  
8 on behalf of Staff to address it.

9 MR. SHEINGOLD: Let me first clarify a  
10 proposal because I don't think that is fully captured.

11 CHAIR McRAE: I am not hearing you.

12 MR. SHEINGOLD: Is this better?

13 CHAIR McRAE: Yes.

14 MR. SHEINGOLD: I just want to clarify  
15 what our proposal is first and then address your  
16 question.

17 The maximum size we are proposing is 400  
18 megawatts. If the unit had no flexibility, was a base  
19 load unit, and it had no flexibility to ramp down, and  
20 these are really the off peak hours that you are talking  
21 about, then, there is, basically, a formula that would  
22 reduce the maximum size of capacity.

23 Now, for base load units, coal units,  
24 even coal gasification units, they have technically the

0274 1 flexibility to ramp down off peak hours, so if that  
2 capacity was 50 percent, it would have the capability  
3 during those hours to ramp down to closely match  
4 Delmarva's load.

5 Now, the energy is priced relatively  
6 inexpensively for units so it may be better even above  
7 the load to sell it at a profit. So, we have in there in  
8 our formula for maximum size an adjustment mechanism that  
9 would reduce the size where there's no flexibility. And,  
10 I think, if there is the type of ramping flexibility that  
11 I'm suggesting, that really is not an issue in terms of  
12 matching during the off peak hours.

13 So, in terms of addressing your  
14 question, which is what is the risk of doing it, does  
15 that present a risk.

16 CHAIR McRAE: Excuse me. Please keep  
17 your voice up.

18 MR. SHEINGOLD: I'm sorry. It is,  
19 basically, captured in the evaluation criteria. We have  
20 a specific category called exposure that, basically, if  
21 you're under 200 megawatts, you are going to get a  
22 significant number of points. A total of six points. It  
23 also takes into account the credit worthiness of the  
24 seller.

0275 1 So, what we have done is, we've tried to

2 accommodate Delmarva's concerns which are legitimate in  
3 terms of having a scoring system that, basically, takes  
4 that into consideration. It is really more complex than  
5 what has been suggested by Delmarva.

6 CHAIR McRAE: I did see, and I know  
7 Mr. Geddes is going to speak and it may further clarify  
8 that, but I do recall reading in some of the material  
9 supplied by Delmarva that when you are talking about  
10 exposure and selling off excess, it does, in fact, depend  
11 on off peak, or when you are selling it and what the  
12 market is doing. So, there isn't an automatic assurance  
13 that you are going to sell at a profit, at least as I  
14 understand.

15 MR. SHEINGOLD: There will two issues.  
16 One is, if the contract is structure so you, as the  
17 buyer, have the ability to reduce, to call on the output,  
18 to reduce the output when it is not economic, you can do  
19 that, and that would address Delmarva's situation when  
20 it's either uneconomic or you don't have the load.

21 If it's economic, it would make sense to  
22 sell it into the market and the profit would go to the  
23 benefit of ratepayers. And this is done on a very  
24 short-term basis.

0276

1 CHAIR McRAE: Mr. Geddes.

2 MR. GEDDES: Madam Chair, the point I  
3 was trying to make is I want to make sure we don't lose  
4 site of the fact that whatever occurs in this RFP, it  
5 does have to be plugged back into the IRP, where Delmarva  
6 will have to do a formal 10-year study of its demand.  
7 There will be opportunities to ask questions about that.  
8 And that the ultimate determination as to whether this  
9 project, even if it is approved, whether it's one or two,  
10 even makes it into the IRP in terms of through that  
11 process is open to question today. Because if you look  
12 at the statute, and this is really the key to all of  
13 this, all of this really leads up to this one sentence in  
14 the statute, under Section 1007.

15 CHAIR McRAE: Point me to the specific  
16 sentence.

17 MR. GEDDES: I was about to do that. It  
18 is the same 1007(b), but it is the second paren one. It  
19 is in the middle of the page, or the middle of the  
20 paragraph, which begins Delmarva is required to conduct  
21 an integrated resource planning.

22 But then it states further on, In its  
23 IRP, DP&L shall systematically evaluate all available  
24 supply options during a 10-year planning period in order

0277

1 to acquire sufficient, efficient and reliable resources  
2 over time to meet its customers needs at a minimum cost.

3 And earlier in that paragraph it says  
4 that Delmarva must, in this effort, enter into short- and  
5 long-term contracts, own and operate facilities, build  
6 generation and transmission, make investment on demand  
7 side and take any other Commission approved action to  
8 diversify their retail load.

9 I think it is hard to imagine a scenario  
10 where Delmarva is not going to be in the energy market  
11 trying to accomplish these things on behalf of their  
12 customers.

13 MR. MONACELL: Madam Chair.

14 CHAIR McRAE: Excuse me. I see  
15 Commissioner Winslow. Can I hear from him first and then  
16 you, Mr. Monacell.

17 COMMISSIONER WINSLOW: Mr. Geddes. I  
18 listened closely to our visiting professor, and also we  
19 know we have heard from a wind of people.

20 If we were to limit this inquiry to what  
21 Delmarva wants to, we would run the risk of not having  
22 valid bids from the constituency that they are arguing  
23 for?

24 MR. GEDDES: Our contention is, I would

0278

1 not use the word valid. I would use the word bids in  
2 terms of it's the concern, that from a commercial  
3 prospective, that if the size of the unit and the  
4 guarantees that are required are either too small and/or  
5 too onerous, that the number of bids that you will  
6 receive will reflect those conditions. And it is a  
7 balancing act. I am not trying to suggest that anybody  
8 knows for sure.

9 But the guidance that we have and Mr.  
10 Sheingold has done a lot of these transactions in the  
11 commercial world, and you also have NRG and others  
12 suggesting that these are important criteria to set in  
13 the sense of trying to attack people to participate.  
14 Because there is no guarantee that if the RFP goes out,  
15 people will necessarily participate if the conditions,  
16 they believe, are too onerous.

17 So, it is that balance that we are  
18 trying to achieve here.

19 CHAIR McRAE: Mr. Monacell.

20 MR. MONACELL: I just wanted to say, I  
21 fully disagree with Mr. Geddes' interpretation of the  
22 statute. If a candidate is selected in the RFP process,  
23 and it is the only candidate for the IRP process, it  
24 still has to pass muster.

0279

1 But the Commission should not assume  
2 there are parties here in this room that agree with that.  
3 There are parties who, for example, Bluewater Wind and  
4 the Staff issue sheet discussion disagrees with that.  
5 So, that is an issue before you.

6 CHAIR McRAE: Well, actually, it does  
7 lead into a question I had with respect to Bluewater and  
8 NRG and, perhaps, even SCS around this notion that unless  
9 there is something like 400,000 or 600,000 or better, I  
10 think are some of the numbers I have seen, that the whole  
11 deal as to your participation is tied into that.

12 And I question whether -- and it may  
13 have been clarified in your writings but I did not see it  
14 -- how it is that Delaware is looked to as the sole  
15 source in this process as opposed to more than one

16 long-term contract. And if some of the participants who  
17 expressed the concern around 600 megawatts or above  
18 because of your capacity requirements to support the  
19 generation you are putting out would speak to that.

20 I think that was Bluewater. It was NRG.  
21 Maybe even SCS.

22 MR. MANDELSTAM: Madam Chair, this is  
23 Peter Mandelstam from Bluewater Wind.

24 I am not sure I fully understand your  
0280

1 question, but I can speak to the issue of 600 megawatts.  
2 Any wind developer spends a great deal  
3 of time trying to design the appropriate size project.  
4 It is a rather involved process. As we speak, I have  
5 boats in the Delaware Bay and in the Atlantic Ocean doing  
6 geotech and geophysical to understand the subsoil  
7 conditions, which is a crucial element to understand the  
8 total price.

9 CHAIR McRAE: I'm not questioning. I  
10 did understand that.

11 My question tied to -- at least in  
12 interpretation of your writing -- that Delaware the load  
13 here would be essential to the process versus Delaware  
14 combined with the Eastern Shore of Maryland.

15 Are there logistical reasons why this  
16 load must be the one that supports -- this load  
17 exclusively that supports your undertaking. You are not  
18 the only one. NRG needs to speak here and maybe SCS.

19 MR. MANDELSTAM: I know, Madam Chair.  
20 It was a very simple calculation in the initial instance  
21 as we filed our initial comments.

22 The initial RFP was for 200 megawatts.  
23 Let's assume a capacity factor of 33 percent. You get a  
24 600-megawatt wind farm, which satisfied the RFP request

0281  
1 for 200 megawatts. It was very simple. That was our  
2 baseline initial analysis. We were responding to 200  
3 megawatts. We assumed it was 200 megawatts at 100  
4 percent capacity an issue that is still before you. It  
5 was a very simple calculation on our part.

6 CHAIR McRAE: Very good. How about NRG?  
7 Are they here?

8 MR. LONG: Madam Chair, as we said in  
9 several of our filings, as we looked at this project, we  
10 looked at it -- and if I am digressing to far reel me  
11 back in.

12 As we looked at this project and worked  
13 with the legislature on the legislation earlier this  
14 year, and to bring everybody back, truly the intent of  
15 the legislation was to prevent something like the 59  
16 percent rate increase that consumers experienced this  
17 year from happening as we get into the future.

18 As NRG looked at that and we looked at  
19 this project, we looked at the needs in Delaware and a  
20 couple of things jumped out of us right away.

21 One is that Delaware, as a whole, has  
22 been growing in population size significantly for the

23 last 10 to 15 years. It is one of the leaders on the  
24 East Coast. I think the number for Delaware, as a whole,  
0282

1 was 17 percent growth rate.

2 Sussex County, on the other hand, was in  
3 the 38 percent range. And there is no, in our opinion,  
4 in the research that we did, there is no sign that that  
5 is going to drop away.

6 So, one thing is meeting that demand  
7 going forward. And clearly, we have been talking about  
8 that today.

9 The second thing is the environmental  
10 benefits that the state has made a priority that  
11 Mr. Cherry is here to discuss.

12 And the third thing is the cost equation  
13 that I mentioned earlier. In that, we looked, as I  
14 mentioned in my opening remarks, we looked at clean coal,  
15 in particular, as being one very solid solution to  
16 addressing long-term stability of prices, for, at least,  
17 the duration of the contract and then in the market  
18 beyond then.

19 How did we get to the 600 megawatts? It  
20 is really an efficiency calculation.

21 CHAIR McRAE: Now, as I said to the  
22 Bluewater representative, I understood how you got there.

23 My question related specifically to how  
24 do you off load capacity in terms of other buyers? I  
0283

1 understand we're going to have to make some decision, and  
2 we certainly want to maximum the bid involvement. But I  
3 also want an understanding of what other measures are  
4 underway in terms of other buyers. Are you looking at  
5 that, other contracts beyond what you might do in  
6 Delaware? That wasn't really fully addressed.

7 MR. LONG: The short answer to your  
8 question is, yes. We are looking at other potential  
9 buyers for this load in the area.

10 The longer answer to the question is,  
11 this is the faster moving vehicle to get generation built  
12 in the state. And it's the surest vehicle. The  
13 legislature and the Public Service Commission clearly  
14 stepped up and showed the leadership in this regard and  
15 said, Look, we want to make sure we get the right iron in  
16 the ground and have the energy and capacity that our  
17 customers need long term in the state to try and prevent  
18 another major rate increase from happening down the road.

19 As a result, as we put in our bid and  
20 what we proposed in this booklet that I think most of you  
21 have seen, is that 630 megawatt plant and what we  
22 suggested is a contract for 600 of those megawatts.

23 CHAIR McRAE: Thank you. Is someone  
24 from SCS here? Gather not.  
0284

1 Are there other questions, questions or  
2 comments with respect to Section 1, which, as I  
3 understand, Issue 1 covers size, security, product,  
4 credit, a number of items in there.

5 COMMISSIONER CLARK: One brief comment,  
6 Madam Chair. At least it makes it difficult from our  
7 prospective. RFP process has not been completed yet. If  
8 you are talking about doing things in terms of an  
9 election, setting up an election, we won't know what the  
10 candidates are and what the goals are until the IRP  
11 process is done. That is something that makes this even  
12 more difficult from our prospective in going through  
13 this. I don't know if anybody has any thoughts or can  
14 help me with that at all.

15 CHAIR McRAE: I completely agree with  
16 what you are saying. I am not so sure I can give you  
17 help. Although, sometimes I think that is the way it is  
18 in the real election, too. Not that that is helpful,  
19 but I agree.

20 I did get some encouragement from the  
21 fact that many of the things that we are looking at here  
22 may be giving general guidance on will have to be  
23 reconciled at some juncture with the IRP process. And  
24 so, it is very likely that there will be necessarily be

0285

1 some refinements that will come with additional  
2 information. So, I do realize that we are somewhat  
3 hampered in terms of what we know at this moment.

4 With that said, am I in a position to  
5 move beyond the legislative prospective, Issue 1, and go  
6 on to the subissue two, which is, I think bidder  
7 threshold requirements.

8 I know the parties have listed their  
9 various positions. If there is something further that  
10 you want to elaborate on there, or if the Commissioners  
11 have questions, this would be the time.

12 COMMISSIONER CLARK: Madam Chair, point  
13 of order.

14 Do you want to hold the discussion until  
15 the end?

16 CHAIR McRAE: Well, I am open on that.  
17 I was thinking we can do it that way. Get clarification,  
18 and then discuss it. Is that okay?

19 COMMISSIONER CLARK: Okay.

20 CHAIR McRAE: Okay. Fine. We are at  
21 item two. Threshold requirements. I do have various  
22 positions listed here.

23 COMMISSIONER WINSLOW: Madam Chair,  
24 Mr. Geddes.

0286

1 MR. GEDDES: I apologize. Trying to  
2 make sure I was on the right spot.

3 COMMISSIONER WINSLOW: On Issue No. 2,  
4 are your comments pretty much the same with respect to  
5 the prospective of Staff?

6 MR. GEDDES: Yes. I think they have  
7 been covered generally by all of the parties and  
8 Mr. Sheingold, in particular, covered the exposure issue  
9 in terms of dealing with some of the issues that Delmarva  
10 had raised.

11 CHAIR McRAE: Do any other persons have

12 comments with respect to subissue two, which is the  
13 threshold requirements and questions?  
14 COMMISSIONER WINSLOW: I do have another  
15 follow-up question, Madam Chair.  
16 With respect to Mr. Monacell's issue of  
17 the stranded cost, is it Staff's position that that,  
18 obviously, is an issue to be dealt with, but this is not  
19 the appropriate time?  
20 MR. GEDDES: Can I give you a one-word  
21 answer Commissioner?  
22 COMMISSIONER WINSLOW: Yes.  
23 MR. GEDDES: Yes.  
24 COMMISSIONER WINSLOW: Thank you.

0287  
1 MR. GEDDES: I can elaborate.  
2 COMMISSIONER WINSLOW: That's fine.  
3 MR. GEDDES: Point of clarification,  
4 Madam Chair.  
5 CHAIR McRAE: That strikes me as more  
6 tide to one, but I don't know.  
7 MR. GEDDES: I'm not sure we have the  
8 same issue sheets.  
9 CHAIR McRAE: I was looking, too. You  
10 have it under as Issue 2 or 1.  
11 MR. GEDDES: Because of Mr. Howatt's  
12 prodigious efforts in generating issue sheets every  
13 couple of hours.  
14 CHAIR McRAE: That was my concern.  
15 MR. GEDDES: The one that I believe is  
16 most appropriate has the date of October 16, 2006, and  
17 then on Page 2 has issue, subissue two, company/customer  
18 risk. The earlier one --  
19 CHAIR McRAE: Which page?  
20 MR. GEDDES: Page 3.  
21 CHAIR McRAE: I see it. I see it.  
22 MR. GEDDES: I don't have the latest  
23 version.  
24 CHAIR McRAE: Even you don't have the

0288  
1 most current version.  
2 MR. GEDDES: Seriously, Page 3 is  
3 correct.  
4 CHAIR McRAE: I see it now.  
5 MR. GEDDES: I have six different copies  
6 of this, if you would like me to share.  
7 CHAIR McRAE: I am struggling with two  
8 or three here. Thank you.  
9 I think Commissioner Winslow asked you a  
10 question regarding Mr. Monacell stranded assets.  
11 COMMISSIONER WINSLOW: Cost issue.  
12 MR. GEDDES: Yes, Madam Chair. And I  
13 answered Commissioner Winslow that I did not think it was  
14 necessary for the Commission to engage on that issue.  
15 The statute is pretty clear on how that is to be treated.  
16 But in any event, it is not an issue for today's  
17 consideration, from Staff's prospective.  
18 MR. WILSON: Well, the company would



19 take the position that it is important enough that the  
20 Commission, at least, acknowledge it and address it in  
21 some form or fashion. Because we are going to make these  
22 decisions that result in these huge numbers or potential  
23 risk to customers. It's somewhat disingenuous to just  
24 leave it and ignore that whole possibility.

0289

1 So, if we are going to make the  
2 decision, let's make the decision and cover the  
3 contingencies.

4 CHAIR McRAE: Mr. Wilson, I will just  
5 point out that it was discussed that at some point this  
6 would have to be reconciled with the IRP process. So,  
7 there really isn't a concrete decision. There is general  
8 guidance here.

9 And I think in Delmarva's filings, if we  
10 read them, I think we were given a very clear picture of  
11 the potential stranded costs associated with certain  
12 numbers. I recall there were a number of charts  
13 provided, maybe four or five. A couple of draconian  
14 scenarios about what could happen if. So, I think that  
15 we do have a firm grasp on the stranded cost potential.

16 But whether that is going to be a factor  
17 in what happens ultimately in the IRP is truly a separate  
18 matter.

19 MR. TOLMAN. Madam Chair.

20 CHAIR McRAE: Mr. Tolman.

21 MR. TOLMAN: Madam Chair, on this issue  
22 on Page 3, company/customer risk, there is an other  
23 comment. I'm not sure who made this. This report  
24 appears to put the risks of adverse health effect from

0290

1 toxic air emissions and climate change squarely on the  
2 backs of the citizens.

3 I really would like to see some  
4 discussion about how climate change is going to be dealt  
5 with in this RFP. It seems to be largely ignored. We  
6 are talking about the tail here and we are ignoring the  
7 dog.

8 COMMISSIONER WINSLOW: Madam Chair. I  
9 do apologize. I don't recall your name.

10 CHAIR McRAE: Chad Tolman.

11 COMMISSIONER WINSLOW: If the State had  
12 wanted us to exclude the coal gasification process, for  
13 example, or coal, in general, they could have done that.  
14 They did not do that in the legislation.

15 So, we are stuck with the policy  
16 decisions made by the state legislature and the Governor.  
17 And we to have consider the waterfront, so to spoke, not  
18 to push the wind at all.

19 And so, I think we are all very  
20 appreciative of that viewpoint. But I am not sure what  
21 more I can say. If the ultimate decision is coal  
22 gasification process, it is going to be something you are  
23 not going to like, I don't think.

24 MR. TOLMAN: I don't have any problem

0291

1 with coal gasification if it involves carbon capture and  
2 sequestration, allowing those millions and millions of  
3 carbon dioxide into the atmosphere is not the right thing  
4 to do particularly for Delaware. It is a prescription  
5 for disaster in the State of Delaware, and it should not  
6 be ignored.

7 CHAIR McRAE: Excuse me.

8 COMMISSIONER WINSLOW: Madam Chair. I  
9 would concur with you. But if that was, obviously,  
10 something that the legislature is aware of, I am not sure  
11 that there is presently any technical way to avoid some  
12 of that, of what you are speaking, to that process.

13 MR. TOLMAN: Are you saying in order to  
14 get carbon capture and sequestration, we need a new bill  
15 from the legislation? If that is so, that is what we  
16 need to work for.

17 COMMISSIONER WINSLOW: I am in the  
18 process of following what I believe to be the law passed  
19 by the legislature.

20 I have to confess, I have some basic  
21 feelings about the law and the legislation itself. It  
22 might be at some point in time some changes will be  
23 deemed to be appropriate.

24 CHAIR McRAE: Mr. Tolman, I would also  
0292

1 like to add to the remarks of Commissioner Winslow. The  
2 RFP is, and the IRP is, as I see it, is part of an  
3 overall look at the environment, as well as supply needs.  
4 And there is an attempt to bring some balance. But, I  
5 don't really think that we can focus all of our energies  
6 solely on what we do here in the RFP.

7 As you know, and as has been pointed  
8 out, Delaware is also part of the RGGI effort. We have  
9 renewable portfolio standards that include incentives to  
10 address the environment. We have Mr. Cherry here, who  
11 might want to additionally highlight some of the things  
12 that DNREC is doing with regard to emission control.

13 I don't think this process, in this  
14 specific docket, as the overall answer to what happens  
15 with the environment. And there is clearly a sensitivity  
16 that in Delaware. And that is why we have the number of  
17 initiatives ongoing at this time.

18 So, I would ask that we try to put in  
19 prospective some of the limits of what is taking place in  
20 the RPS.

21 And also acknowledge, as Commissioner  
22 Winslow has noted, that the legislature was rather open  
23 in asking the Commission to consider these supply  
24 resources.

0293

1 And I would also point out that even  
2 within the RPS, our points for emission control, as well  
3 as other environmentally friendly attributes, so it is  
4 not altogether ignored in this process.

5 Mr. Cherry, if you do want to add some  
6 comment in that regard.

7 MR. CHERRY: Mr. Tolman, I appreciate

8 very much your comments on climate change and health  
9 impacts. No one is more interested in some of those  
10 issues than my boss, Secretary Hughes and myself.

11 So, I think about this issue, and this  
12 particular issue before us, Issue No. 2, I am not  
13 entirely convinced that this is the time or the issue  
14 with which we would consider. We got issues later on on  
15 the agenda today to talk about rankings, or environmental  
16 impacts, or passing through the cost of compliance for  
17 environmental performance.

18 And to me, this particular issue is more  
19 about the risk to the customer and to Delmarva.

20 So, it might be a discussion that would  
21 be better fit in our discussion, perhaps, a little bit  
22 later.

23 But while I got the mic, I would also  
24 point out, in addition to RGGI and what is going on at

0294  
1 the national level, you, perhaps, read in the paper  
2 today, or yesterday about the Department of Natural  
3 Resources Multi P efforts, Multi Pollutant. We are  
4 attempting to draft regulations that would address SOX,  
5 NOX, fine particulates, mercury. These are health  
6 issues. The reason we are doing this is for health  
7 issues.

8 Those regulations will be in place in  
9 one form or fashion at least as stringent as proposed,  
10 federal guidelines, long before the first power plant is  
11 built under this RFP.

12 And I think that goes a long way to  
13 addressing the need for all of us, in my business, the  
14 Public Service Commission's business, your business, in  
15 addressing health impacts as a result of power plant  
16 construction.

17 So, with that, I will turn it over to  
18 the Chair.

19 CHAIR McRAE: I am never concerned about  
20 putting Mr. Cherry on the spot. My concern was whether  
21 he would give back the chair, frankly.

22 Are there additional questions or  
23 comments? We are on Page 3. And I think we dealt with  
24 subissue two. Before we leave that, are there any other

0295  
1 questions the Commissioners may have or other parties?

2 I would note right now, it is twelve  
3 o'clock almost. We had planned to get through this and  
4 have a break and have lunch. But I am just looking to  
5 Staff for some guidance. Is it essential that we break  
6 now for lunch, or is there a preference to continue  
7 through this docket. Is twelve o'clock magic?

8 MR. BURCAT: There is no magic.

9 CHAIR McRAE: In that case, we will  
10 continue.

11 Fine. Moving on. Moving on to Page 4.  
12 We have the RFP and IRP relationship. Regarding which  
13 there has been considerable discussion already, but if  
14 there is anyone listed who feels their position is not

15 clearly stated, by all means, or want to elaborate on  
16 their position. I see Mr. Firestone speaking up.

17 MR. FIRESTONE: Thank you, Madam  
18 Chairwoman. I won't try to take too much time.

19 I would start off by noting, while  
20 Mr. Long noted that NRG worked with the legislature on  
21 this bill, I, as a private citizen, and Delmarva customer  
22 did not.

23 I would also note a couple of comments  
24 that we heard today.

0296

1 Mr. Geddes said something to the effect,  
2 the Commission's responsibilities are clear as they are  
3 set forth in the statute.

4 He also said, If you look at the  
5 legislation, and that is your load star.

6 Additionally, Commissioner Winslow said,  
7 If the legislature wanted to exclude coal gasification,  
8 it could have. But we are stuck with the policies of the  
9 State Legislature. And I submit the exact same thing is  
10 true for the issue of price.

11 107(d) is clear on its face what the  
12 criteria are in this RFP. There are other areas in the  
13 statute dealing with the IRP where issues of price, or  
14 lowest coal or minimal cost is used. But the criteria  
15 that are set forth in 107(d) are the only criteria.

16 And when we look at other sections and  
17 the legislature uses minimal cost or lowest cost or  
18 reasonable cost, then we have to assume the legislature  
19 meant something different when it said that the five  
20 criteria should be -- we should then use cost  
21 effectiveness.

22 And I submit that the only way, then, to  
23 interpret the term cost effectiveness is first to figure  
24 out which projects are effective under the criteria as

0297

1 listed. And then, evaluate them on the basis of cost.

2 But price, since it is not listed as a  
3 criteria, certainly can't be given the -- is given much  
4 more weight than anything else. And it is not even  
5 listed.

6 And I submit that the Commission and  
7 DNREC would be arbitrary, capricious and clearly not  
8 consistent with the law if they included price as a  
9 criterion.

10 CHAIR McRAE: Well, I would say in just  
11 looking at this, price is not specifically stated as a  
12 criteria. But I do think within the context of price  
13 stability, price was a concern. And if we also reflect  
14 on the history, and I understand you are referring to the  
15 literal discussion of absence of statements, as well as  
16 what specifically is incorporated in the statements. But  
17 I think it is also important to consider that this  
18 legislation was an outgrowth of price shock that was  
19 experienced when we went through the transition from  
20 regulated into a restructured stage.

21 So, I think to some extent, we would be

22 remiss in ignoring that a part of price stability does  
23 incorporate price. So, I don't think it is wholly absent  
24 from the discussion. And that is just my observation

0298

1 there.

2 MR. FIRESTONE: I would agree with most  
3 of what you said, other than the notion of price, initial  
4 price being captured in the notion of price stability.

5 I would agree that the legislature seems  
6 to have been more concerned in the context of this RFP  
7 with notions of price stability than it was with initial  
8 lowest price. And, indeed, it is not that price has no  
9 role. When this RFP process is complete and the IRP  
10 process is complete, and those two are melded, then these  
11 projects will then be balanced on a cost or price basis,  
12 looking at other things that Delmarva looks to in the  
13 IRP.

14 It is not that price has no role. It is  
15 the way in which it has been used by the Staff seems to  
16 be wholly inconsistent with how the legislature and how  
17 the legislation, which, as noted by Mr. Geddes, is our  
18 load star.

19 CHAIR McRAE: Well, as you noted, it has  
20 to also be integrated in the IRP. And even in the point  
21 system, there are other considerations that go well  
22 beyond price, as you know.

23 So, I think it all comes out to be a  
24 balancing consideration. And price, at least from my

0299

1 prospective, I can speak only as one Commissioner, is not  
2 the predominate driver in the overall picture. But it is  
3 one that can't be ignored. And I did appreciate the  
4 distinction that you were making.

5 Thank you. Are there additional  
6 questions, comments, or elaborations?

7 MR. TOLMAN: Excuse me, Madam Chair. If  
8 I could make one comment about the point of price.

9 The question is how is price projected  
10 to change overtime. And clearly burning coal is the  
11 cheapest way to generate electricity right now. But that  
12 is only true if you are letting all of the carbon dioxide  
13 go into the atmosphere.

14 And if you pass on to ratepayers the  
15 problems coming down the road when, say, a big tax on  
16 carbon goes on at a point where people realize we can't  
17 continue doing this, this is just going to wreck the  
18 place. What is the price overtime and who accepts the  
19 risks of that?

20 And my conclusion is that over time, the  
21 cost of putting carbon dioxide into the atmosphere is  
22 going to be so expensive that it will be a dominate  
23 factor. So, there is going to be a real rate shock for  
24 Delmarva customers when they find out there is \$100 a ton

0300

1 tax on carbon, which might come in 10 or 15 years.  
2 Certainly, before the end of the lifetime of these plans.

3 CHAIR McRAE: Now, I don't think that is

4 a point that is addressed in this section. It clearly  
5 was, at least in the context of the terms, some  
6 discussion about around pass-through costs, whether it is  
7 a tax, where it would go, and if it was something else.  
8 I don't think it is in this section.

9 But if Mr. Howatt or Mr. Geddes could  
10 help me out. The point was raised around the cost and  
11 how we would deal with, perhaps, changes in law that  
12 imposed tax on carbon or some other penalties and whether  
13 it would be a pass-through or not.

14 As I said, I don't believe it is covered  
15 in the RFP/IRP relationship. It has been raised by  
16 Mr. Tolman. I don't know where it fits in this issue  
17 discussion at this point.

18 MR. GEDDES: It fits in at the end,  
19 Madam Chair. We have a specific issue that deals with  
20 changes in the law.

21 CHAIR McRAE: So, we will kind of hold  
22 that in abeyance and be clear about item three.

23 MR. MONACELL: Madam Chair. The comment  
24 of DEUG is properly stated on the issue sheet. But it

0301  
1 has not been discussed.

2 I understand the several Commissioners  
3 who said that the issue of stranded cost and how you  
4 might deal with that if that potential ever comes is not  
5 before you today. I'm not trying to get you to decide  
6 something else.

7 But I'm trying to get you to remember  
8 what we are doing today. And keep in mind, there is a  
9 whole class of customers, those served at transmission  
10 voltage, GST customers, who have no right to receive  
11 fixed price standard offer service. They are only able  
12 to receive hourly price service.

13 And while the statute, House Bill 6,  
14 does not specifically refer to hourly priced service, I  
15 think it is fair to say the legislature could not have  
16 had them in mind because Delmarva would not require any  
17 long-term asset to serve hourly priced customers.

18 Just wanted you to keep that in mind,  
19 when later you decide it in the IPS or in a later rate  
20 case.

21 CHAIR McRAE: Which somehow ties into  
22 your stranded cost discussion around what happens if  
23 there is an addition to the distribution cost to address  
24 stranded cost.

0302  
1 So, I think you have spoken to it, or it  
2 has been spoken to in a couple of places.

3 Let me also make clear, since you  
4 thought I was moving on, Mr. Monacell, as we move to the  
5 next issue, I am asking anyone who wants to elaborate on  
6 that issue or has a question regarding it, to contribute  
7 at this time.

8 So, if there are no more questions with  
9 regard to three.

10 MR. GEDDES: Madam Chair, could I make

11 one point.

12 CHAIR McRAE: Sure.

13 MR. GEDDES: One clarification. I was  
14 just asked to point out, in response to Dr. Firestone's  
15 comments that in the definition of integrated resource  
16 planning, the last sentence on Paragraph 13, Subparagraph  
17 13 of the definitions, 1001, does, as I think the Chair  
18 and other Commissioners realize, points us in the  
19 direction of establishing an integrated resource plan  
20 that requires the distribution company in this case, one,  
21 Delmarva, to acquire sufficient and reliable resources  
22 over time that meet its customers needs at a minimal  
23 cost.

24 So, I do think price permeates the whole  
0303  
1 discussion through the RFP and through the price  
2 stability, as you pointed out, plus the IRP.

3 CHAIR McRAE: Where were you there?

4 MR. GEDDES: I'm sorry, Madam Chair. I  
5 was in the definitions, Section 1001, Subparagraph 13  
6 defining integrated resource planning. And I was quoting  
7 from the last sentence of that subparagraph.

8 CHAIR McRAE: Thank you, Mr. Geddes.

9 COMMISSIONER CLARK: Madam Chair, just  
10 on Issue No. 3. We kind of agreed to go through the  
11 issue sheet and address these issues like this. What is  
12 the scope of what we are going to decide today with  
13 regard to the interrelationship between RFP and IRP. Are  
14 we going to articulate a decision today that maps out  
15 what we decide that is into the IRP?

16 CHAIR McRAE: Well, my understanding,  
17 and I'm sure Mr. Geddes will straighten me out if I am  
18 incorrect here, but we are going to set some parameters  
19 that will drive the bid process, what we get in response  
20 to the RFP.

21 But the interpretation of RFP and IRP is  
22 a later step that Delmarva and I assume other parties  
23 will be involved in. We are not casting in stone what  
24 gets into the IRP.

0304  
1 COMMISSIONER CLARK: It is very helpful  
2 the issue sheet that Staff worked on.

3 CHAIR McRAE: I think you with the mic.

4 COMMISSIONER CLARK: The question at the  
5 bottom seems that would have us decide what is the  
6 relationship between the RFP and IRP as contemplated in  
7 the legislation. Are we going to make a decision on that  
8 today?

9 CHAIR McRAE: Well, I asked Mr. Geddes  
10 to frame what we need to give them today. And I looked  
11 at the issue sheet and those questions. I don't have  
12 clarity at this point. I was relying very confidently  
13 that he had a plan.

14 MR. GEDDES: And hopefully it is  
15 integrated.

16 But, I think, how I would try to answer  
17 the colloquy between Madam Chair and Commissioner Clark

18 is that to the extent there are clarifications, or  
19 specific points that need to be made with regard to how  
20 the issue is set out, we need to have that.

21 But I think that we have enough from  
22 this -- the way the issue is framed -- to address it in  
23 terms of allowing the bidders to know that to the extent  
24 there is a second step, if will you, integrated resource

0305  
1 planning, where we will try to take these bids, and we  
2 believe we have sufficient time to do that and plug them  
3 into the integrated resource plan, and have that result  
4 for the Commission's ultimate determination.

5 CHAIR McRAE: And I will just say for  
6 the record, I take no ownership of this issue sheet,  
7 Mr. Geddes. All right.

8 With that said, we are into Issue 4,  
9 which is the contract project size location, and we have  
10 several comments here. I am working with two sheets  
11 here.

12 Do the comments we have here reflect the  
13 inputs of the various parties? Is there any desire to  
14 elaborate or questions?

15 Then we will move onto issue subissue  
16 five, which has to do with the company/customer risk.  
17 Let me make sure. Maybe it changed. Let me get to the  
18 right place here.

19 MR. GEDDES: I think the issue sheet,  
20 Madam Chair, with the date of October 16th --

21 CHAIR McRAE: Okay. I'm wrong. I went  
22 back to the 13th.

23 Five is product for purchase.

24 MR. GEDDES: Madam Chair, just point of

0306  
1 context.

2 This is an issue that we talked about  
3 briefly in terms of the unit specific or contingent  
4 versus firm power. I believe that Mr. Shaw addressed it  
5 in his opening remarks. And I commented on it briefly.

6 I think this sets forth the issue, but I  
7 am happy to respond to any comments the company may have.

8 CHAIR McRAE: I see Mr. Citrolo  
9 standing.

10 MR. CITROLO: Yes. Thank you, Madam  
11 Chair. I have a question, I believe, for Staff, related  
12 to this, which is my Issue No. 5, that is also related to  
13 one and four, I believe, or three, seven and eight,  
14 depending upon which one you are looking at it.

15 It also goes to a comment that  
16 Mr. Sheingold said earlier.

17 If I can indulge for a minute, I am  
18 going to read from the report where my question lies, and  
19 it relates to what he said earlier. And if anyone cares  
20 to look at the report, it is on Page 9. It is in the  
21 second full paragraph, the last two sentences there.  
22 This is in regard to capacity size. It starts, A coal  
23 IGCC plant could bid 400 megawatts of which 200 megawatts  
24 would be dispatchable. To the extent the plant is



0307

1 running above 200 megawatts and this exceeds Delmarva's  
2 Delaware SOS load, the energy would likely be below the  
3 PJM market price and the energy would be sold at a profit  
4 with the positive margin going to reduce Delmarva's  
5 Delaware SOS customer cost.

6 And in this lengthily report, this is  
7 one of the first pieces that I circled, my first question  
8 is, in regard to this scenario, if, in fact, it were to  
9 develop, who is doing the selling from the independent  
10 consultant's report. Who is actually responsible to sell  
11 that excess capacity into the market?

12 MR. SHEINGOLD: Well, it would be  
13 Delmarva directly, or if it entered into a contract with  
14 an energy marketer to do that.

15 MR. CITROLO: So, in this scenario you  
16 are saying it would be Delmarva, the SOS provider who  
17 would be responsible to sell the supply, the excess  
18 supply, rather.

19 MR. SHEINGOLD: They could do that, or  
20 they could, basically, contract it out to somebody else.

21 MR. CITROLO: I'll be a little more  
22 clear on my question.

23 Is the SOS provider required anywhere in  
24 the statute to do that?

0308

1 MR. SHEINGOLD: I think it raises an  
2 issue of when you have a requirement with a new generator  
3 that you have an output contract.

4 And the practice in every RFP that I  
5 have ever done is to have what is called a unit  
6 contingent contract, which is, you have a contract. You  
7 pay for the capacity. You pay for the energy. Depending  
8 on the unit, you have flexibility. A day in advance or  
9 an hour in advance as to how much you want. It is all  
10 set forth in the contract.

11 And Delmarva procures standard offer  
12 service under what's called a requirements contract to  
13 serve the load.

14 And to make this meaningful for  
15 generators, we feel it is important to offer bidders the  
16 opportunity to bid under unit contract. That is the way  
17 business is done. That is the way plants get financed.

18 It does suggest, I think, under any  
19 scenario in terms of what the size is, that there is  
20 going to be a degree of energy management, that Delmarva  
21 would either do directly, or it would contract out.

22 And there's a lot of precedent in the  
23 industry for states where they have standard offer  
24 service and the utilities also have unit contracts where,

0309

1 typically, where they have a number of options, but they  
2 can sell power from the unit contracts back to an energy  
3 marketer who, basically, values that. They could sell it  
4 short term. They could require the energy marketer  
5 providing standard offer service to take that into  
6 consideration in their bid.

7                   So, with this process, there would be  
8     some degree of energy management.

9                   MR. CITROLO: Next question on that  
10   particular matter.

11                  MR. WILSON: Your Honor, may we have a  
12   chance to respond.

13                  CHAIR McRAE: At this time, Mr. Wilson,  
14   you said a lot in your writing on that.

15                  Continue, Mr. Citrolo.

16                  MR. CITROLO: In their defense, I am not  
17   trying to defend them on whether they are required to or  
18   not. I needed that to introduce my question.

19                  More concerning to us, and that is,  
20   assuming, say, Delmarva decides to do it, or agrees to do  
21   it for the heck of it, where is the requirement to pass  
22   that profit, you said, positive margin, energy was sold  
23   at a profit with a positive margin going in to reduce  
24   Delmarva's SOS customer cost. Where is the provision  
0310   that requires them to pass that through to customers?

2                  MR. SHEINGOLD: That would be a  
3   regulatory issue.

4                  MR. CITROLO: Let me get to the second  
5   part of the question since that was your answer.

6                  That would, though, imply then if, for  
7   example, if the market was lower than the contract price,  
8   the excess cost would be passed through to customers just  
9   as if the profits were to be.

10                  MR. SHEINGOLD: Let me give you a  
11   concrete example of dollars.

12                  If the contract says that energy prices  
13   under the contract are \$40 a megawatt hour. And the  
14   market price is \$30 a megawatt hour. What you would  
15   rationally do, if you have the flexibility under the  
16   contract to say, I am going to take 200 megawatts instead  
17   of 400 megawatts and to have that tool down, you can do  
18   that.

19                  If the market price is \$50 a megawatt  
20   hour, regardless of what the load is, you would want to  
21   run it. And either to use that to serve your load or to  
22   sell it into the market and have that money that could  
23   presumably go to offset ratepayers cost.

24                  But I am giving you a commercial sense.

0311                 CHAIR McRAE: Delmarva did have  
1   extensive writings on this very point. And so, I think  
2   Mr. Wilson wanted, or some representative of Delmarva  
3   wants to respond.

4                  MR. FINFROCK: This is Mark Finfrock. A  
5   couple of point to that.

6                  One, we disagreed with the comment in  
7   the IC report that energy would be sold at a profit. In  
8   all likelihood, if you look at the chart that Tom Shaw  
9   referred to, those hours where there with be excess  
10   energy will be likely when the load is low for Delmarva  
11   customers, which is typically off peak hours where prices  
12   are low. Therefore, prices are low in the market,  
13

14 however this contract is higher, it would likely be sold  
15 at a loss.

16 CHAIR McRAE: Let me clarify, though.  
17 Mr. Citrolo's questions were one, who sells it? And two,  
18 what happens if there is profit and whether it is  
19 transferred. And also in the event of a loss, where does  
20 it go. He had some very specific questions. And I hope  
21 we are not going to get caught up when you sell it and  
22 the like.

23 MR. FINFROCK: That's fair. And part of  
24 this issue's list is unit contingent versus firm that I  
0312

1 would like to address, as well.

2 But as far as the gains and losses, it  
3 would be a decision of the Commission to share it with  
4 SOS customers or share it through the distribution group  
5 of customers, including SOS.

6 With respect to the issue of firm versus  
7 unit contingent, the IC report suggest that generators  
8 are more desiring of unit contingent. While that may be  
9 true, there is a host of generators to participate in the  
10 marketplace are SOS providers. Participate in the  
11 marketplace with firm energy, not unit contingent energy.

12 Generators can manage that issue of  
13 sourcing energy, not just from its particular asset. So,  
14 I don't want the IC report to give an impression that  
15 generators cannot manage this risk because they can  
16 manage this risk.

17 MR. SHEINGOLD: I would like to say,  
18 those are three-year contracts to provide requirements --

19 CHAIR McRAE: There is something about  
20 your voice.

21 MR. SHEINGOLD: I have a soft voice. I  
22 apologize.

23 Those are three-year contracts to  
24 provide requirement service and they are not associated

0313  
1 with building new generation which requires hundreds of  
2 millions of dollars that has to be financed usually under  
3 fairly carefully structured financing.

4 So, it is just different. If you look  
5 at what the legislation requires is looking at long-term  
6 contracts from generating units within Delaware. And we  
7 think it is important to structure the RFP so it would  
8 allow projects like that to be built.

9 And in my experience, uniform practice  
10 that it's done under unit contract.

11 MR. GEDDES: Point of clarification,  
12 Madam Chair. I don't think this is an issue at this  
13 point because the report of Staff allows for either one.

14 CHAIR McRAE: I was going to say, is  
15 there any reason you can't bid firm or unit contingent.

16 MR. GEDDES: We are not proposing a  
17 limitation.

18 The company, on the other hand is,  
19 suggesting that the bid should only be a firm bid all  
20 requirements. And what we are saying is, no. Why don't

21 we see what the market gives us and allow both. And we  
22 will then evaluate both when that time comes.  
23 CHAIR McRAE: And on behalf of Mr.  
24 Citrolo, I do want to clarify, it was at least Delmarva's

0314

1 understanding that it would be the responsible party to  
2 do the selling.

3 I know that our consultant has suggested  
4 various kinds of alternatives. But Delmarva's documents  
5 assume that that responsibility is going to fall on their  
6 shoulders.

7 Is that not --

8 MR. WILSON: That's correct, Your Honor.  
9 If the RFP is between Delmarva and a market provider,  
10 there is no arrangement for some other party to come in  
11 and to handle that. So, there was a real concern about  
12 forcing Delmarva back into a marketer's role.

13 CHAIR McRAE: Okay. Thank you. Are  
14 there additional questions or comments relating to  
15 product for purchase.

16 MR. MANDELSTAM: Madam Chair, question  
17 please.

18 CHAIR McRAE: Who is speaking?

19 MR. MANDELSTAM: Peter Mandelstam.  
20 Bluewater Wind.

21 I did not understand the Staff comment  
22 under number five where the Staff said quote, Delmarva  
23 should purchase only the attributes needed to comply with  
24 current laws and regulations.

0315

1 I certainly understand the RPS  
2 requirement as listed. But I am wondering what other law  
3 and regulations the Staff may be referring to. Are they  
4 talking about RGGI or other things? If the Staff could  
5 elaborate.

6 MR. GEDDES: I would ask Mr. Sheingold  
7 to respond to that inquiry.

8 MR. SHEINGOLD: It is just the RPS.

9 MR. MANDELSTAM: Just the RPS. Thank  
10 you.

11 CHAIR McRAE: It got answered. I am  
12 still searching through these issue sheets.

13 Anything else with respect to product  
14 for purchase? All right. Then, we move to delivery  
15 point.

16 Does anyone have anything to add on this  
17 subject?

18 MR. MANDELSTAM: Madam Chair.

19 CHAIR McRAE: Yes.

20 MR. MANDELSTAM: At the risk of speaking  
21 again, if I might.

22 Bluewater Wind has been involved and  
23 knowledgeable about many offshore projects both in the  
24 United States and Europe.

0316

1 And one of the things I point out for  
2 the Commission's interest is that the state of New York

3 through its Long Island power authority in its issuance  
4 of its offshore wind RFP decided that there was an  
5 important public policy to provide interconnection to the  
6 offshore wind project.

7 As you might imagine, offshore wind  
8 projects are more remote from interconnection points. It  
9 has been publicly stated, and you can see this in the  
10 regulations of (INAUDIBLE) and various news articles, and  
11 I just double-checked it this morning, that (INAUDIBLE)  
12 intends to pay for all of the aspects, the permitting the  
13 construction, operation and maintenance of an offshore  
14 cable from the interconnection point at the substation to  
15 the offshore substation at the three-mile limit.

16 That was the basis for the Bluewater  
17 comment. It was not some arbitrary notion. But rather a  
18 well understood public policy in the U.S. that regulators  
19 decided it was important to do this in order to try to  
20 bring the benefits to the State of Delaware. And I  
21 reiterate that comment with that expanded note.

22 CHAIR McRAE: Thank you. Commissioners,  
23 anything there? Thank you. Thank you for that  
24 explanation. And now we are onto Issue 7, which is the

0317

1 standard form purchase power agreement.

2 We have only Staff and Delmarva.  
3 Anything you want to add on this?

4 MR. GEDDES: No, Madam Chair.

5 CHAIR McRAE: Moving on to the  
6 regulatory out clause, Page 9. Anything? Anything  
7 there?

8 Next we have the bidder threshold  
9 requirements. I am surprised nobody wants to comment on  
10 that one.

11 I will move along. Then we have  
12 security.

13 MR. WILSON: We have a brief comment.

14 CHAIR McRAE: Let me just say this. I  
15 am going to take no response as standing by your  
16 comments, if that is appropriate. I just want to be  
17 clear. That just means you are standing by your  
18 comments.

19 CHAIR McRAE: Excuse me, one second. I  
20 think Delmarva stepped up first, and then you, if you  
21 will. Please, again, repeat your name for the record. I  
22 think your name will also need to be stated.

23 MR. GUY: Madam Chairwoman, Jonathan  
24 Guy. Outside counsel for Delmarva.

0318

1 I have represented utilities for 13  
2 years. And much of that time has been dedicated to  
3 assisting utilities deal with long-term power contracts  
4 to the out of market.

5 Most recently, I represented PEPCO in  
6 the Mirandt bankruptcy, and there the exposure on the  
7 contracts that they had was hundreds of millions of  
8 dollars.

9 The reason why security is so critical

10 here is because if you have a long-term power contract,  
11 you can be assured that contract will be out of market.  
12 It will be one of two things. It will either be above  
13 market, and in that situation, the costs are passed onto  
14 ratepayers.

15 PEPCO has a long-term power contract  
16 with Panda Brandywine, which is an exact same situation  
17 we have here. A generator unit specific generator.

18 The above market cost of that contract  
19 runs into the hundreds of millions of dollars. At the  
20 time, everybody thought price was right. But it never  
21 is.

22 So, the first situation is the cost is  
23 passed through to the ratepayers because you can never  
24 get it right.

0319

1 The second situation is, the situation  
2 that everybody is hoping for, which is the contract price  
3 is below the market price and that the ratepayers will  
4 benefit.

5 Unfortunately, when that happens, and  
6 this has been my experience in 13 years of representing  
7 utilities that serve customers, when that happens, the  
8 utility often, the generator often simply avoids its  
9 obligation.

10 We have had in the last few years,  
11 bankruptcies for Calpine, USGen, NRG, Mirant, Enron. It  
12 goes on and on. And each of those situation where the  
13 generator had a long-term contract, the first thing it  
14 said to Bankruptcy Court is, we want out.

15 When that happens, the customers, unless  
16 there is adequate protection, lose the benefit of the  
17 long-term contract.

18 What we have proposed here is a  
19 situation where there is a letter of credit available to  
20 the company in the event that the generator files  
21 bankruptcy. That only covers a two-year window.

22 Ideally, it would cover the full length  
23 of the contract, but it is just a two-year window.

24 So then you have future damages. These

0320

1 are the hundreds of millions of dollars. And the bigger  
2 the contract, the longer the contract, the bigger the  
3 exposure.

4 In that situation, you have to look to  
5 the company to ensure that it has the ability to pay the  
6 damages.

7 If you have a noninvestment grade  
8 company, the chances of that company filing for  
9 bankruptcy are ten times greater.

10 If you have a noninvestment grade parent  
11 company, the chances are the same.

12 In Mirant, PEPCO had a parent guarantee,  
13 but it did not matter because the parent filed for  
14 bankruptcy.

15 What you need here is the biggest letter  
16 of credit you can get. You need investment grade

17 companies.

18 To say that the company could have a  
19 lead in the assets is, in my experience, meaningless,  
20 because the lender to the generator will be securing  
21 against those assets.

22 That is why it is critical for the  
23 benefit of the customers, not for the company, for the  
24 benefit of the customers to be absolutely maximum amount  
0321

1 of security available to protect those customers in the  
2 event that the contract is below market.

3 CHAIR McRAE: I will ask Staff to  
4 respond on this one.

5 I do note in Delmarva's filing that,  
6 indeed, there was a comprehensive list of companies that  
7 we all recognize who had the bankruptcy experience. And  
8 the FERC response to Mirant, I think, is pretty  
9 appropriately documented.

10 So, I recognize that Delmarva's concern  
11 here is not without foundation. So, I would ask Staff to  
12 expand, if you will, on your thought processes behind  
13 that.

14 Commissioner Clark, you want to say  
15 something first.

16 COMMISSIONER CLARK: Just an additional  
17 question to ask Staff to could focus on and anybody else  
18 who wants to comment on. Two-fold.

19 One, as a new generator comes on line,  
20 it is my understanding we would not have any regulatory  
21 authority over them. That may or not may not be correct.

22 Secondly, to articulate why it would not  
23 be in the best interest of the ratepayers to have a  
24 letter of credit to offer them security. That is a  
0322

1 pretty significant issue, and I need pretty specific  
2 responses to that to change my feeling on that.

3 MR. GEDDES: Let me try to respond in  
4 reverse order, if I could. Let me respond to the cases  
5 and the situation and then come back to the security  
6 issue.

7 There is no question that the history  
8 with regard to long-term contracts and breaching of them  
9 has been, shall we say, not without its problems. There  
10 is not a Mirant situation. We don't have back-to-back  
11 contracts. We are not trying to take advantage of part  
12 of the contract and rejecting the other part Under 365 of  
13 the Bankruptcy Code.

14 The other thing that we have is, we have  
15 the Third Circuit which does not allow people to just  
16 casually file bankruptcy petitions. There has to be a  
17 real good faith finding. And there has to be an  
18 opportunity, if you will, to preserve value of the  
19 estate.

20 So, just because the market goes in a  
21 different direction and you want to take advantage of  
22 that, or limit your pain, doesn't necessarily mean on a  
23 unit specific contract that you can just waltz into court

24 and not be subject to a motion to dismiss.

0323

1 The case law has changed in the last  
2 couple of year, in part, because of Mirant and others.

3 The issue really comes down to  
4 Commissioner Clark's question, which is, is it necessary  
5 to have, quote, an investment grade bidder. I would  
6 point out some of the list of Mr. Guy's list of  
7 horrors, if you were, were investment grade companies.  
8 But yet, that did not protect the party who was aggrieved  
9 from being subject to the rules, and I use that carefully  
10 in front of my partner, Ms. Iorii, in the Bankruptcy  
11 Court, because it sometimes can be quite frightening what  
12 a Bankruptcy Court can do in one day to your equity and  
13 your position.

14 But again, in the context of worst-case  
15 scenario, which clearly I think the company is shading  
16 its arguments in that flavor, and I understand why they  
17 are is that you would be subject, or you would subject  
18 check your ratepayers to the market. You not necessarily  
19 subject them to a blackout. You would subject them to  
20 what the market price in the worst-case scenario that a  
21 bidder, who had bid, let's assume a unit specific  
22 project, was inclined to file a bankruptcy petition  
23 because of that contract. And although, it definitely is  
24 a problem, it does not necessarily mean that the

0324

1 customers would not have power. The question would be at  
2 what price.

3 So, going back to this issue, we are  
4 back to the funnel.

5 Our position, Staff's position is not to  
6 allow customers, or, I'm sorry, bidders that have one  
7 particular type of credit form or another and make  
8 exclusion decisions based on that. If somebody who has  
9 investment grade quality, security wants to bid, fine.  
10 But we should also allow noninvestment grade bidders to  
11 bid, as well, and provided security, letters of credit,  
12 parent guarantees, second liens, whatever, and that will  
13 be evaluated in terms of the company's concerns, as we go  
14 through the process.

15 But, again, we don't need, I don't  
16 think, it is consistent with the legislation to have a  
17 gatekeeper here that says, All right, anyone who is  
18 noninvestment grade no longer has an opportunity in this  
19 process.

20 CHAIR McRAE: Mr. Citrolo, before you  
21 proceed, I believe there was this gentleman here. I'm  
22 sorry. I don't know your name.

23 MR. KEMPTON: Willett Kempton. It was  
24 nine I wanted to comment on. If I have an opportunity

0325

1 to do that.

2 CHAIR McRAE: Well, why don't we stay  
3 with ten, and then we will go back to nine.

4 MR. CITROLO: Madam Chair, I just wanted  
5 to clarify for the Commission, with regard to our



6 comments.

7 I believe there is no, based on what Mr.  
8 Guy said, there is no longer reason for you to consider  
9 our comments. I initially understood that Delmarva was  
10 seeking to take a senior secured position with the  
11 generator, and from our understanding that is a comment  
12 to say they would still be supportive. I believe if they  
13 were to take a senior position, it would have a chilling  
14 effect on someone trying to raise capital to expand their  
15 facility. So, I think I understand that.

16 If I understand that, correctly, then,  
17 in effect, the security requirements are softened to a  
18 level of comfort. But at the same time, we don't  
19 necessarily object to the position of Staff in regards to  
20 this. But we would like to emphasize, if you do decide  
21 to go that route, then the sizing requirement becomes  
22 important because that becomes a bigger tool to limit  
23 exposure to customers. And that is, rather, you don't  
24 want to turn over the entire contract to one provider,

0326  
1 necessarily for that risk. As I said, that would be more  
2 important to consider sizing, the size of the contract to  
3 an individual bidder. Thank you.

4 CHAIR McRAE: I gather Commissioner  
5 Clark has a response here.

6 COMMISSIONER CLARK: Follow-up question.  
7 Maybe a developer could help me.

8 Can you articulate why it would not be  
9 appropriate to require a letter of credit regarding the  
10 long-term contract that would be entered into?  
11 Obviously, there are risks, as far as higher prices by  
12 going through a long-term hedging process like this. And  
13 why would it be inappropriate to require a letter of  
14 credit to go ahead and secure the potential benefit for  
15 the ratepayers, if the process provides a lower long-term  
16 price and somebody would end up defaulting later on.

17 MR. GEDDES: I would like to ask  
18 Mr. Sheingold to clarify that. I am not sure that is  
19 consistent with Staff's position.

20 MR. SHEINGOLD: There are two types of  
21 security. The security that you put up when you sign the  
22 contract. It is \$100 a kilowatt. And we clarified in  
23 our final decision, it was admittedly an inconsistency  
24 between different parts --

0327  
1 CHAIR McRAE: Mr. Sheingold, I can't  
2 hear you. I am going to bring you up here with me.

3 MR. SHEINGOLD: I've always had a soft  
4 voice. It reminds me of my mother telling me that.

5 There are two parts of security  
6 requirements. The security you are required to put up  
7 when you sign the contract. We, basically, agreed with  
8 Delmarva. It should be \$100 a kilowatt in the form of a  
9 letter of credit. And if it is 200 megawatts, that's 20  
10 million dollars. It is 400 megawatts, that is 40 million  
11 dollars. A significant amount of money.

12 Our view of this is because we are not

13 requiring bidders to be investment grade, we are relying  
14 more on security. We are looking at what is commercially  
15 reasonable. And given the situation here, being on the  
16 high end of that, when the plant achieves commercial  
17 operation, we've proposed \$200 a kilowatt in Security.  
18 And if the seller is not investment grade, they would  
19 need to put up that up in the form of a letter of credit.  
20 If they are investment grade, they would, basically,  
21 follow the formula that Delmarva has for credit, how much  
22 needs to be in the form of a letter of credit, and how  
23 much in the form of a parent guarantee. And in the  
24 industry, those parent guarantees are capped. And those

0328

1 are the parties that may be investment grade.

2 I think a difference between what we  
3 proposed and what Delmarva has proposed, the level and  
4 security that we're acquiring is probably higher than  
5 under their formula. But it is capped at that level.  
6 And the reason is in the industry, it has been my  
7 experience that people putting up hundreds of millions of  
8 dollars to finance the plant want some limit on the  
9 amount of security.

10 In addition to that, Delmarva would have  
11 a junior lien on the plant that would be subordinate to  
12 the lenders. So, if a plant has lenders, we also  
13 suggested a requirement that the amount of the loan would  
14 not cover more than 70 percent of the assets. So, it is  
15 a significant position akin to a second mortgage on a  
16 house.

17 So, our approach, trying to look at this  
18 in a balance sense is that we have actually put a lot of  
19 emphasis on the amount of security in the form of that  
20 security to give comfort to Delmarva and its customers  
21 who might benefit from that.

22 But it is also something that needs to  
23 be looked at in the form of what is commercially  
24 reasonable. You are paying for insurance, and you want

0329

1 to pay for what is an appropriate amount of insurance,  
2 and you don't want to pay an excessive amount of  
3 insurance because that will get reflected in the cost.

4 And I would say in the industry, there  
5 is a lot of focus on looking at the amount of security.  
6 And a letter of credit is better than a parent guarantee  
7 because most of the companies that Delmarva mentioned  
8 were investment grade at the time and they end up going  
9 bankrupt.

10 MR. MANDELSTAM: If I may, Madam Chair.

11 CHAIR McRAE: No. Because this  
12 gentleman has been extremely patient. And I would like  
13 to give him an opportunity to speak.

14 MR. KEMPTON: Madam Chair, I am  
15 addressing Issue 9.

16 CHAIR McRAE: Yours is on Issue 10?

17 MR. MANDELSTAM: Yes, Madam Chair.

18 I wanted to respond to Commissioner  
19 Clark and amplify, if I might, Mr. Guy's comments and

20 talk specifically about wind projects.

21 I note for the record that no wind  
22 energy project has ever gone into bankruptcy, just as a  
23 matter of record.

24 And to talk about second lien. Mr Guy

0330

1 said that a second lien on assets is, quote, meaningless.  
2 While I respect that position with respect to fossil  
3 plants, a distinction with a wind plant is, you have an  
4 operating, producing generator where all of the costs,  
5 essentially, all of the costs associated with the  
6 production of that electricity have already been  
7 internalized.

8 In other words, there is no fuel cost  
9 and the operation maintenance cost is very small. So, a  
10 security interest, a second lien, if you will, on that  
11 asset is rather meaningful, because he or she who has a  
12 lien on that property has a lien on an asset that  
13 produces and will not likely change its cost profile  
14 because after all, all of the cost have been  
15 internalized, when you build a wind project, you,  
16 essentially, buy 30 years worth of electricity on day  
17 one.

18 So, I think it is important to  
19 understand the different ways in which different  
20 generators are treated by the financial community.

21 And if you look through project finance  
22 firms that have worked with wind developers, and I  
23 certainly can recommend some to the Commission and you  
24 can look in the literature, you will see there is a

0331

1 different way in which wind plants are treated.

2 I certainly agree with the history that  
3 Mr. Guy outlined. But I wanted to point out to the  
4 Commission and to respond to you, Commissioner Clark,  
5 that there is a distinction here.

6 If I might be permitted a question  
7 because there was something completely related to this.

8 In the latest draft, October 12th, on  
9 Page 52, the Staff said something that I thought was --

10 CHAIR McRAE: The latest draft of what?

11 MR. MANDELSTAM: Staff said something  
12 that I thought was curious. It is just one sentence.

13 MR. GEDDES: Staff's report, Madam  
14 Chair.

15 MR. MANDELSTAM: October 12th, the  
16 latest report, Page 52.

17 It said, in the middle of the page,  
18 Based on a project of 400 megawatts that is  
19 nondispatchable, i.e., has no ability to ramp down to  
20 less than full load once it is on line for 25 years with  
21 a noninvestment grade seller would receive zero points  
22 out of the six.

23 I would submit that is a profile of a  
24 wind plant, and I would submit that that overly harsh,

0332

1 given what I just said. Yes, one occasionally has

2 noninvestment grade sellers, but the project company  
3 itself is internal and there are securities and liens,  
4 which protect the counter party in this case, Delmarva.  
5 And dispatchability, I think, the Staff  
6 has already dealt with and the 25-year contract, of  
7 course, is in Delmarva's interest because wind or any  
8 renewable generation where there is no fuel cost has  
9 stable price power throughout its life. So, again,  
10 another hedge.

11 And I would like to further comment, as  
12 Mr. Guy said, when a wind project is below market and  
13 with higher energy prices, they often are in the United  
14 States, no wind developer has ever sought to break that  
15 contract.

16 And most prominently in the California  
17 crisis, when prices went through the roof, there were  
18 thousands and thousands of generators producing something  
19 on the order of between 12 and 20 percent, depending upon  
20 the measuring period of the load in California, and none  
21 of those generators sought to break their contracts.  
22 Those were all hugely below market.

23 And despite the California melt down the  
24 wind developers were, if I may be so bold, the only good  
0333

1 people producing below market power and not breaking  
2 contracts.

3 So, one can imagine a situation in  
4 Delaware or elsewhere where you would have a significant  
5 amount of renewable generation, give tremendous benefit  
6 to the citizens and ratepayers and the economy of a place  
7 like Delaware.

8 CHAIR McRAE: Am I clear? Is that a  
9 question?

10 MR. MANDELSTAM: Yes, it was, Madam  
11 Chair. You're quite right. It was a question with a  
12 statement at the end.

13 The question is, what is the Staff's  
14 position on a 400 megawatt generator, noninvestment grade  
15 that gets zero points and why?

16 MR. GEDDES: I would ask Mr. Sheingold  
17 to respond if that's appropriate.

18 MR. SHEINGOLD: What we are trying to do  
19 here, this is the exposure category, is looking at the  
20 amount of exposure which is a function of the credit  
21 worthiness of the seller, the size of the project, and  
22 the term. Price will be a factor, but that will be  
23 considered separately.

24 So, while our position has been to allow  
0334

1 larger projects to bid than Delmarva would, there are  
2 negative attributes to that we have all talked about.  
3 And that would be taken into consideration in this  
4 scoring system. We will develop a matrix to implement  
5 that.

6 MR. MANDELSTAM: So, you are saying in  
7 that scenario, a wind developer would get zero points?

8 MR. SHEINGOLD: I'm not saying that

9 specifically since there was a base load project.

10 So, given that you are not a base load  
11 project, you have lower capacity factor project, we may  
12 take that into consideration in that matrix.

13 MR. MANDELSTAM: Would you take into  
14 consideration the UCAP value, or your own value? PJM  
15 UCAP value or a factor you imputed based on the capacity  
16 factor?

17 MR. SHEINGOLD: We would look at that.  
18 I think it would probably be more focused on the energy  
19 value.

20 CHAIR McRAE: Energy value.

21 MR. SHEINGOLD: Right. What we have  
22 tried to do, that is one of the reasons we are treating  
23 wind separately in terms of the credit requirements.  
24 They have lower capacity factor and they have lower UCAP

0335 value. We have adjusted the amount of security, based on  
1 what their profile is. We have tried to, in different  
2 respects, take into consideration the specific attributes  
3 of wind projects.  
4

5 MR. GUY: Madam Chairwoman, can I  
6 clarify a point about the security.

7 CHAIR McRAE: Yes.

8 MR. GUY: The security proposed by  
9 Delmarva does not protect the company or the ratepayers  
10 in full. I want to be crystal clear about that.

11 If the ratepayers were fully protected,  
12 there would be a letter of credit in place, marked to  
13 market for the remaining term of the contract. So, you  
14 would know at all times that if the generator defaulted  
15 -- let's say your damage claim, for example, in PEPCO, we  
16 had short-term contract for SOS with Mirant. They were  
17 short. 18 months. They were out of market. Mirant  
18 said, We are going to reject those contracts unless you  
19 renegotiate them. The damage is on those short-term  
20 contracts were 105 million dollars. The only way you can  
21 fully protect the ratepayers is if you have a letter of  
22 credit for 105 million dollars.

23 And as I said, the longer the contract,  
24 the bigger the megawatts, the bigger the exposure.

0336  
1 What is being proposed here is just a  
2 very small window, so that the company is protected for  
3 two years so it can then find replacement suppliers.

4 But that will not mean that the  
5 ratepayers will not be damaged. The only way the  
6 ratepayers will not be damaged is if the claim that they  
7 have against the generator is paid in full. And that  
8 often does not happen in bankruptcy.

9 The second lien, the point about the  
10 second lien is, think of it as your house. If you got a  
11 house that is worth \$100,000, and you have \$100,000  
12 mortgage, what value is the second lien to you. It has  
13 nothing.

14 So, the question is, what we have now is  
15 no exposure. The ratepayers have no exposure to that

16 market differential. The security is critical. And  
17 Delmarva is not asking for what I would recommend that it  
18 would be entitled to. It is asking what is realistic  
19 because clearly the generator couldn't place an LC for  
20 hundreds of millions of dollars. No one would bid. So,  
21 it is already a significant compromise. And the  
22 investment grade issue is just part of that package.  
23 Thank you.

24 CHAIR McRAE: Do we have any further  
0337

1 comments on security before I go back to Issue 9?

2 MR. FINFROCK: Madam Chair, I have one  
3 more comment.

4 CHAIR McRAE: This double teaming here  
5 with Delmarva. I see some people on the sidelines. Are  
6 they going to join in, too? It is a whole Delmarva  
7 family over there.

8 MR. FINFROCK: With respect to a  
9 security issue that shouldn't be overlooked. And that  
10 is, that rating agencies when they assess Delmarva's  
11 credit rating which is important to issuing debt and the  
12 cost of issuing that debt, they look at the contractual  
13 relationship the company has and has entered into. And  
14 they look at the credit quality of the counterparties  
15 that back those contractual relationship.

16 This contract, even at 200 megawatts,  
17 would be a significant size transactional relationship  
18 for Delmarva power. Significant. If it is with a below  
19 investment grade counterparty, there will be downward  
20 pressure on our bond ratings just because of that. And  
21 that cannot be overlooked.

22 And we can say we can do all this  
23 through the evaluation process and measure it, but at the  
24 end of the day, if we don't put some parameters around

0338

1 what bidders have to bid on, what safeguards, we may  
2 never know if this process is going to work from  
3 procuring energy through an RFP. I don't know if we can  
4 address all of these in the evaluation process.

5 CHAIR McRAE: Well, let me just say, I  
6 know this was addressed -- the contractual issue, as well  
7 as the VIE, I can't recall the specific details, but in  
8 both instances there was this concern that this was going  
9 to impact Delmarva's rating. And I think there was  
10 discussion in the consultant's report, especially, with  
11 respect to the VIE, how different states have dealt with  
12 the issue. But they are somewhat interrelated here, and  
13 I will ask Staff to comment. I mean, the down grade with  
14 respect to security and then, the down grade on the VIE  
15 issue were both covered in Delmarva's writing.

16 MR. GEDDES: Madam Chair, they are  
17 covered later on. Would you like me to cover them now?

18 CHAIR McRAE: Well, they raised them in  
19 connection with security. The argument, again, is that  
20 overlap. Whatever works best for you.

21 MR. GEDDES: They are separate issues.

22 CHAIR McRAE: Well, leave the other

23 part, but it seems to me that the answers are going to  
24 overlap.

0339

1 MR. GEDDES: I would be happy to address  
2 them now, then, if that is the pleasure of the Chair.

3 CHAIR McRAE: I don't know. Whatever  
4 you want. They are just tied, all of this issue --

5 MR. GEDDES: Well, if you look at Issue  
6 14, which is, in essence, the argument Mr. Finfrock was  
7 making, it specifically states that there are occasions  
8 where these contracts are imputed to the balance sheet of  
9 the utility.

10 And our position is set forth there as  
11 to whether there should be a rising factor associated  
12 with that, and whether it should represent the Standard  
13 and Poor's factor of 50 percent that the company is  
14 suggesting. That, in essence, is what the argument is,  
15 or a lower number because the comments that NRG made,  
16 that when you have a commitment, if you will, that the  
17 will be pass through to the customers and a favorable  
18 regulatory environment, there is less risk associated  
19 with that contract.

20 So, I think that there is a distinction  
21 and a difference, and I think the discussion was  
22 addressed to this particular issue.

23 With regard to VIE. Every time I get  
24 into FABS, I get nervous. But in any event, I don't

0340

1 think there is a disagreement. The only question is,  
2 whether that issue is resolved up front as part of the  
3 RFP project, or subsequently as part of the ultimate  
4 negotiations of the contract.

5 And, I think, that Staff's position is,  
6 it should be dealt with up front. We would agree that it  
7 would be better if it was not, quote, Characterized as a  
8 VIE entity, for accounting purposes. And I don't think  
9 we have a disagreement with the company on that.

10 CHAIR McRAE: I think I referred to it  
11 as a VIE issue, as opposed to fitting in, was it Rule 46  
12 or whatever, Finance Rule 46. But I do feel that there  
13 was some overlap around this whole issue because part of  
14 it was wrapped in the concern about what happens to the  
15 company's bond ratings -- credit ratings. I'm sorry.

16 MR. GEDDES: One the last point, Madam  
17 Chair, if I might.

18 I do think we need to not lose sight of  
19 the fact that no one is asking that the customers be  
20 fully protected here, or maybe the company is asking that  
21 it be fully protected here, I think that is pretty clear  
22 with its comments, notwithstanding the last comment about  
23 mark to market, which is sort of fascinating because you  
24 would have to recalibrate that every day.

0341

1 Under the statute, it is clear that the  
2 legislature has asked to us do this. And, I think, if  
3 you read the legislation carefully, the legislature  
4 clearly understood that there are risks that were going

5 to have to be borne by all of the stakeholders; the  
6 company, the customers, and the providers. And what we  
7 have tried to do is try to match those the best we could.  
8 Certainly, people can disagree. And the company clearly  
9 disagrees with our positions on security.

10 But, again, we are in the same place we  
11 were when we started this argument, or discussion, I  
12 should say some three hours ago. Are you going to have a  
13 gatekeeper RFP, or are you going to have a RFP that  
14 attempts to better capture what the potential  
15 opportunities are in the marketplace, and then through  
16 the evaluation process make sure that the company, the  
17 customers, are protected to the greatest extent possible  
18 consistent with commercial reality. Because at the end  
19 of the day, if this is not a commercially viable contract  
20 for both sides, there is not going to be a contract.  
21 Thank you.

22 MR. WILSON: Your Honor, House Bill 6  
23 speaks to providing sufficient need to meet the SOS  
24 requirement for customers. It doesn't speak to

0342

1 marketer's needs or the company's needs. So, there is  
2 not this balancing or sharing of risk implicit at all.  
3 And we simply don't read it that way. We read it in such  
4 a way that the customer should be no worse off entering  
5 into a contract than they are standing here today. The  
6 customer should not take on additional risk.

7 MR. GEDDES: Point of clarification.  
8 Section 1010, I think, shows that that argument is,  
9 perhaps, not correct. The legislature clearly understood  
10 there were risk here and created a mechanic where this  
11 Commission could create a nonbypassable charge to try to  
12 correct a potential problem that all of us sitting here  
13 today may not have foreseen. I think the legislature  
14 knew what it was doing and was trying to balance those  
15 risk out.

16 CHAIR McRAE: Is there specific language  
17 in Section 1010 you want me to look at?

18 MR. GEDDES: It is Subparagraph C. It  
19 specifically states, After a hearing and determination,  
20 the Commission is authorized to restrict retail  
21 competition and to add a nonbypassable charge. This is  
22 something that Mr. Monacell was talking about before.  
23 And I didn't want to get into that. But in response to  
24 Mr. Wilson's question, I think the legislature understood

0343

1 there were risks here and at least created this mechanic  
2 as a way to try to deal with it should that scenario  
3 occur.

4 But, again, none of us know how this is  
5 going to work out. We are attempting to comply with the  
6 legislation. And the company's doomsday scenario. I  
7 apologize for the characterization. The company's  
8 conservative scenario is one that some people in this  
9 room take issue with.

10 But at the end of the day, it has to be  
11 balanced on both sides. If the company got everything it



12 wants, we would not have a contract.  
13 MR. WILSON: Your Honor, 1010 speaks  
14 to --  
15 CHAIR McRAE: Excuse me. You are  
16 commenting on 1010, and then we are going to go to  
17 Commissioner Clark and then that will be the end of  
18 discussion on this issue.  
19 MR. MONACELL: Madam Chair.  
20 COMMISSIONER CLARK: Is there more  
21 discussion on that point?  
22 CHAIR McRAE: Well, I think there is.  
23 Where is that voice coming from?  
24 COMMISSIONER WINSLOW: I said something.  
0344  
1 CHAIR McRAE: Commissioner Clark has  
2 something that relates to this. And I think if yours is  
3 directed to Delmarva, we will go there, and if it is  
4 Staff --  
5 COMMISSIONER CLARK: My question was a  
6 little tangential or a little bit more peripheral. So,  
7 if somebody has something more directly on this point, I  
8 will defer to them.  
9 COMMISSIONER WINSLOW: May I, Madam  
10 Chair.  
11 Delmarva has stated that they are in  
12 support of the legislation, HB6. And they have also  
13 brought up the issue of security. And, I think, it is  
14 accurate to say it was a conservative, as it should be,  
15 recommendation with respect to security.  
16 The other side says, that is not  
17 commercially feasible. I am, frankly, not aware of any  
18 10- to 25-year contract, as I sit here discussing this  
19 issue; nor am I aware of any financial institution that  
20 gives out 25 year letters of credit in these  
21 circumstances.  
22 Is this position of Delmarva in some way  
23 undercutting the viability of HB6?  
24 MR. WILSON: Not at all, Your Honor. We  
0345  
1 are asking for a letter of credit for the first two  
2 years. And the point that was being made was, you cannot  
3 get a letter of credit that would fully protect the  
4 customers for the duration of the contract. That is the  
5 very point that there is going to be exposure.  
6 And with respect to 1010, 1010 is simply  
7 a mechanism for distributing the cost of a contract that  
8 is entered into, consistent with the spirit of HB6, which  
9 was an effort to stabilize price. It is not an effort to  
10 spur generation, but it is to stabilize price. So, you  
11 don't want to get into a situation where customers are  
12 worse off because you do something that explodes price  
13 because they are sitting there with a long-term contract  
14 that is unsecured. And that the only people who are  
15 making the money would be the marketers. Because  
16 Delmarva will seek recovery on a dollar-for-dollar basis  
17 from customers pursuant to 1010 and pursuant to other  
18 provisions in the section.

19                   So, it is the Delaware customers who we  
20 are advocating on behalf of and vigorously.

21                   CHAIR McRAE: You would agree that the  
22 language contemplates the potential for stranded cost. I  
23 mean, why else would you have that nonbypassable  
24 provision?

0346

1                   MR. WILSON: Well, the language  
2 recognizes there can be customer migration which would  
3 result in stranded cost. It does not recognize that you  
4 should enter into a bad contract which results in a huge  
5 charge being passed off.

6                   CHAIR McRAE: Well, I don't think the  
7 language made that distinction.

8                   My point is only was that one could  
9 construe that language to indicate that there was, at  
10 least, some contemplation of that possibility for  
11 whatever reason. And that is not to take away from the  
12 arguments you are making. But I don't see the language  
13 having any utility beyond recognizing that there could  
14 be.

15                   MR. WILSON: We would have to  
16 respectfully disagree given the climate in which House  
17 Bill 6 was passed. I can't envision a scenario where  
18 this body was thinking in terms of imposing additional  
19 cost on customers.

20                   CHAIR McRAE: My argument is, I,  
21 frankly, don't know what any individual voter was  
22 thinking. I am simply suggesting looking at the language  
23 alone, as Staff counsel pointed out, it does indicate at  
24 least some contemplation of some excess course, if in the

0347

1 event that that occurred, there is some mechanism to  
2 address it. For whatever reason it arose. I am not  
3 saying how that affects my response. But I am just  
4 looking at the language, per se, and what a reasonable  
5 construction of that would be in my thinking.

6                   And I am not going to go to Commissioner  
7 Clark because I think he had some comments.

8                   COMMISSIONER CLARK: Just a quick  
9 question, and I asked it before. It may or may not be  
10 material to this issue.

11                   When you are talking about the  
12 generator, the developer, a generator performing later  
13 under the contract and doing what they should, would any  
14 generator created under this mechanism, will it fall  
15 within the regulatory area of the Commission or would it  
16 not? That is something I would like to know.

17                   MR. GEDDES: I'm not sure I could give  
18 you a yes or no answer. It depends on the generator. I  
19 don't think there is a circumstance where the generator  
20 itself would be subject to regulation. The regulation  
21 would be the costs that are incurred as a result of that  
22 contract and how they get allocated among the customers.

23                   COMMISSIONER CLARK: This maybe very,  
24 very loosely ties back into what we are talking about,

0348

1 but maybe back to the within Delaware definition that's  
2 already passed. Is that really material?  
3 MR. GEDDES: I think it is material for  
4 the qualifications as to who can bid. But with regard to  
5 whether they are subject to the Commission's regulation,  
6 as it currently exist, I think everyone probably read The  
7 New York Times on Sunday, the left hand, front page  
8 column, I would say, no. They would not be subject to,  
9 quote, traditional regulations, utility regulations.

10 COMMISSIONER CLARK: That may or may not  
11 be in terms of what type of security we would require  
12 from them because that might have some kind of impact or  
13 warrant consideration is my point.

14 COMMISSIONER WINSLOW: Madam Chair, I  
15 have a follow-up question if I could ask it.  
16 What I was trying to get to, Mr. Wilson,  
17 I want to know whether or not two-year letter of credit,  
18 whatever letter of credit that you all desire, is, in  
19 fact, commercially feasible for the people who are making  
20 the bids. I think I am hearing over here that it is not.  
21 And I think that is an issue. And I think don't think it  
22 was addressed.

23 MR. WILSON: We believe a two-year  
24 letter of credit is feasible. I will turn to our vice

0349  
1 president and treasurer.

2 MR. KAMERICK: Yes. Letters of credit  
3 are fairly common. They are issued all of the time to  
4 all sorts of entities.

5 COMMISSIONER WINSLOW: Would the cost be  
6 prohibitive to competition on this issue, the bidding  
7 issue?

8 MR. KAMERICK: I can't say for sure,  
9 Your Honor. It would depend on the company and what  
10 other financial characteristics are common to that  
11 company. Does it have a good equity ratio or what are  
12 the other risk factors to the project? But I would say  
13 it is not an uncommon thing to have a letter of credit.

14 COMMISSIONER WINSLOW: I appreciate if  
15 that issue is joined by the consultants, if he could  
16 respond to that, please. Input, please.

17 MR. SHEINGOLD: We looked at what has  
18 been done in other RFP's to say what's commercial  
19 reasonable.

20 The \$200 dollars a kilowatt that we are  
21 recommending, which would be, or 200 megawatts, 40  
22 million dollars and 80 million dollars for 400 megawatts  
23 is on the high side of what's commercially reasonable.  
24 Mr. Oliver has actually participated in some of these

0350  
1 RFP's.

2 The proposal initially was for a  
3 two-year renewable letter of credit by Delmarva. Our  
4 experience is they are commercially available for one  
5 year, renewable. And that's what we proposed.

6 So, if the party did not renew the  
7 letter of credit on time, they could be drawn upon by

8 Delmarva. That is pretty standard practice.  
9 So, I think in terms of the level of  
10 security, it is high relative to industry standards. But  
11 we thought it was appropriate given the fact that  
12 Delmarva has a relatively small size and given its  
13 concern that it would be commercial reasonable, but  
14 probably on the high side of that.

15 And the other thing in my experience,  
16 and I worked for other developers, as well, is having an  
17 uncapped security commitment on a long-term basis is very  
18 problematic. And typically with RFP's there is a cap to  
19 it.

20 CHAIR McRAE: Can we move to Question 9,  
21 and then we are going to take a lunch break, or back to  
22 9.

23 MR. KEMPTON: Thank you, Madam Chair. I  
24 apologize for missing it when you went by it earlier.

0351

1 My name is Willett Kempton. I am on the  
2 faculty at the University of Delaware College of Marine  
3 and Earth Studies. I have about 30 years experience in  
4 analysis of the energy, electricity and light vehicle  
5 sectors.

6 With Professor Firestone, we suggested  
7 CO2 emissions, or lack of CO2 emissions be a threshold  
8 criteria. And that is written already in here. I  
9 thought it was important to address that with regard to  
10 Commissioner Winslow's comment about whether or not coal  
11 would be excluded since the legislation does explicitly  
12 mention one coal Otechnology, IGCC.

13 The press releases by the Governor and  
14 by, at least, four members of the legislature have stated  
15 that IGCC can capture carbon and, therefore, may not lead  
16 to climate change.

17 I sat in this room when HB6 was  
18 finalized, and the Chair of the Committee, Representative  
19 Valihura said he was concerned about climate change. I  
20 differ with my actual party on this issue, and it is  
21 something we have to deal with.

22 I don't think we can interpret this bill  
23 as being neutral on climate change or endorsing emission  
24 of carbon dioxide. We have two bidders that have spoken

0352

1 today. Both of those bidders are capable of producing  
2 power with very little carbon dioxide.

3 The question need not be do we want coal  
4 or not. But rather shall we set up the rules to  
5 encourage bidders to produce carbon dioxide, which I fear  
6 the current rules do, and I will address that later, or  
7 shall we set up the rules to encourage capture of carbon  
8 dioxide or electricity production methods that do not  
9 produce carbon dioxide at all. That's the question.

10 I do not think we can take this  
11 legislation, and there are many statements cited on the  
12 public record as endorsing uncontrolled emissions of  
13 carbon dioxide in the production of electricity both by  
14 the statement of which technology is addressed. It does

15 not say pulverize coal, it says IGCC, by members of the  
16 legislature and the Governor at other occasions. And by  
17 the thrust of the legislature which has environmental  
18 consideration is the second most important consideration  
19 after price stability.

20 CHAIR McRAE: If there are no additional  
21 comments regarding this item, I believe it was spoken to  
22 previously, so I will say nothing more. And at this  
23 point, it is 1:15, approximately. We will take a lunch  
24 break and be back at 2:15. Is that reasonable? Is there

0353

1 a cafeteria here? I don't spend most of my time here. I  
2 am not sure what's in the area. Do I need to make it  
3 2:30, to give people a little additional time? We will  
4 reconvene at 2:30. Thank you.

5 (A luncheon recess was taken at,  
6 approximately, 1:15 p.m.)

7 (Back on the record at, approximately,  
8 2:45 p.m.)

9 CHAIR McRAE: Now back to the business  
10 of today. Docket 06-241. We are working on the issue  
11 sheet dated October 16, 2006.

12 I know there maybe some people who  
13 joined us late and want to make sure you're up to speed  
14 on where we are.

15 We had discussed security and gone back  
16 to Issue 9 on the list, but I do understand there is some  
17 lingering questions around Item 10 Security. So, we are  
18 going to revisit that at this time before moving ahead.

19 I know Commissioner Winslow had a  
20 question and Commissioner Clark additionally had some  
21 questions.

22 COMMISSIONER WINSLOW: Yes, Madam Chair.  
23 If I could ask the Staff's consultant.

24 You referred to looking into what was

0354

1 commercially feasible. I believe one member of your  
2 Staff did that.

3 Could you explain what you did to look  
4 into what was commercially feasible in this situation and  
5 how you made that determination that what Delmarva is  
6 proposing was not commercially feasible?

7 MR. SHEINGOLD: I think in terms of  
8 what's commercially feasible in terms of their security  
9 package, there are two things. One had to do with during  
10 the operational period security that is uncapped. In  
11 other words, they do a mark to market assessment. If  
12 power price became very high that the amount of security  
13 that would be required, in part, probably by a letter of  
14 credit would just keep going up.

15 In terms of the RFP's that are done,  
16 there are usually fixed amounts, or amounts based on the  
17 credit of the party or credit rating.

18 And I have also worked for developers  
19 who would not accept an uncapped credit. And I also  
20 talked to a major bank that provides equity into  
21 projects, and to some extent, they have never done a deal

22 with uncapped security. We talked to a major developer.  
23 They have never done a deal with uncapped security. And  
24 they would find it very problematic.

0355

1 What we have done to deal with this is  
2 come up with an amount of credit support looking at RFP's  
3 that are in the high range, \$200 a kilowatt during the  
4 operation period that are accepted.

5 And I also talked to the risk manager of  
6 my former company, an energy management company, and the  
7 amount of credit support, at least in today's prices,  
8 would be considered high.

9 So, taking that altogether, and taking  
10 into account Delmarva's concerns, we concluded that this  
11 is sort off on the high side of what is commercially  
12 reasonable, but we think is financeable.

13 We also have here a second lien on the  
14 project, and we added a provision, you couldn't have  
15 senior debt that would account for more than 70 percent  
16 of the asset value. So, that would assure that the  
17 junior debt, or the position that Delmarva would have  
18 would be significant.

19 COMMISSIONER WINSLOW: Thank you.

20 CHAIR McRAE: Commissioner Clark.

21 COMMISSIONER CLARK: I want to go back  
22 over a little bit of old ground. I think I misunderstood  
23 this when I read through the material. I want to make  
24 sure I am on the same page.

0356

1 I think I understand Delmarva's  
2 position. Essentially, what you are looking for through  
3 this letter of credit is full expectancy coverage for a  
4 two-year period.

5 With a letter of credit proposal that  
6 the consultant had, can you tell me how that compares or  
7 give me something more.

8 MR. SHEINGOLD: Yes. I would say in  
9 today's market, the amount of security under our proposal  
10 would actually be higher in amount than Delmarva. But  
11 it's a fixed amount. And the concern is, and I talked to  
12 parties that finance these is having an uncapped amount,  
13 which would happen if prices got to be very high creates  
14 a major financing problem. They would prefer having a  
15 fixed amount, even it's higher than they might like. And  
16 that was the difference.

17 Now, we also dealt with the fact that we  
18 are allowing nonrated parties to bid. So, we have a \$200  
19 cap on the amount of security, but for an unrated party,  
20 that means they to have put up \$200 a kilowatt letter of  
21 credit, which is very substantial.

22 COMMISSIONER CLARK: Your proposal  
23 involves obviating that requirement for investment grade  
24 companies?

0357

1 MR. SHEINGOLD: There's a reliance on  
2 the hard security, the letter of credit. And it would be  
3 up to the developer to provide that. And they have to up

4 the developer to provide that. And they have to show in  
5 their bid, as a threshold matter, that they will be able  
6 to come up, with the security and have a letter from  
7 financing institution that their project is financing.

8 COMMISSIONER CLARK: And Delmarva's  
9 proposal also involves a relaxation of the letter of  
10 credit requirement for investment grade companies?

11 MR. WILSON: Well, it's not a  
12 relaxation. It is just a two-year bridge. We recognize  
13 that even with that two-year bridge it doesn't cover all  
14 of the risk that you are asking customers to take on.  
15 You are going from zero risk to some level of uncovered  
16 risk, even with the two proposals that are being put  
17 forward.

18 MR. FINFROCK: In addition to that, if I  
19 could, there is a relaxed provision. There is a  
20 investment grade counterparty. There is a letter of  
21 unsecured credit that is lent to that counterparty before  
22 security has to be put in place, like a letter of credit  
23 it. There is a relaxation, as you move up the credit  
24 scale.

0358

1 MR. SHEINGOLD: And we have no  
2 opposition to that. It would be supported, we presume,  
3 by probably a parent guarantee from a rated entity that  
4 probably will have a cap to it.

5 So, our position is different in a  
6 couple of different respects, but otherwise, we have no  
7 objection to Delmarva.

8 CHAIR McRAE: Well, let me be clear. We  
9 are talking about security, the development security as a  
10 component and then there is operational security.

11 As far as development security, there is  
12 agreement on that point?

13 MR. SHEINGOLD: It is my understanding  
14 that there is agreement.

15 CHAIR McRAE: Is that so?

16 MR. FINFROCK: I agree with that.

17 MR. SHEINGOLD: We will really dealing  
18 with two things. The notion of uncapped operational  
19 period security. And we are dealing with having  
20 noninvestment grade parties. Essentially, they would  
21 need to provide a letter of credit up to the cap, which  
22 is \$200 a kilowatt.

23 COMMISSIONER CLARK: Is there a  
24 meaningful difference in a developer's ability to get a

0359

1 letter of credit under your \$200 cap, as opposed to the  
2 uncapped proposal of Delmarva?

3 MR. SHEINGOLD: Speaking from what is  
4 done in the industry and working for developers and  
5 talking to people that finance these, it is a risk having  
6 an uncapped letter of credit. You are investing hundreds  
7 of millions of dollars into a project. You are really  
8 looking at cost produced power versus the revenues. And  
9 if market prices get very high, and these credit calls  
10 that would take place probably weekly, or maybe monthly,

11 I forget how they're doing it, you would have to have  
12 assured in place that there is the capital there to  
13 support that.

14 And generally, these projects are not  
15 financed that way. And that is a big issue. And I  
16 talked to both developers and people that invest in  
17 equity in the projects, and they view this as a  
18 substantial problem.

19 As I said, I have worked for developers  
20 that would not accept an uncapped security for a  
21 long-term contract.

22 Now, for shorter-term agreements, where  
23 you are buying at the market and selling at a price, then  
24 if you are an energy marketer, you are dealing with

0360

1 uncapped credit calls. But then again, they are  
2 short-term deals. You can manage that. But these are  
3 potentially 10- to 25-year contract. That is a big  
4 issue.

5 MR. FINFROCK: If I could interject.  
6 Accept for the credit issue we are talking about is a  
7 two-year credit issue. We are not talking about a  
8 25-year letter of credit. We are talking about a shorter  
9 term two-year letter of credit.

10 It is more like a marketing wholesale  
11 participant. It is not long term. And they don't  
12 necessarily have to post cash as this letter of credit  
13 gets -- as the exposure gets revalued on a weekly basis.  
14 That letter of credit will have a cushion before any form  
15 of collateral has to come into play.

16 We think two years is more than  
17 reasonable. And to suggest that the cap is more onerous  
18 when you don't know what future markets are going to be  
19 is truly incorrect.

20 CHAIR McRAE: Does that clarification  
21 make any difference in terms of your analysis?

22 MR. SHEINGOLD: No. It is the same  
23 issue. We are aware of the two-year assessment. We have  
24 no problem with that. We sort of clarified that.

0361

1 But the issue is, is not having a cap.  
2 And that does present a problem.

3 Our solution to that, and, typically,  
4 this is what is done for these contracts is to have an  
5 amount of security that is capped. In the case of  
6 noninvestment grade parties, the cap is the same as the  
7 floor. And that would be higher than what you would  
8 expect under their formula in today's market.

9 CHAIR McRAE: The \$200.

10 MR. SHEINGOLD: \$200 a kilowatt.

11 CHAIR McRAE: Yes, Mr. Tolman.

12 MR. TOLMAN: Madam Chair. Item No. 9  
13 that we are dealing with deals with what threshold  
14 requirements are appropriate for Delaware RFP.

15 CHAIR McRAE: Excuse me a minute. We  
16 are back to 9 again, or is nine in relation to 10.

17 MR. TOLMAN: I'm sorry.



18 CHAIR McRAE: I said we were on 10. And  
19 then over here -- I'm sorry -- I can't recall your name.  
20 MR. KEMPTON: Kempton.  
21 CHAIR McRAE: Kempton remembered he had  
22 something to say on nine, which he did. Then we went  
23 back to 10. Now I see you are inviting me back to nine.  
24 MR. TOLMAN: Would I be able to say  
0362  
1 something about nine, or is that out of order?  
2 CHAIR McRAE: Well, by all means. Go  
3 ahead.  
4 MR. TOLMAN: Excuse me?  
5 CHAIR McRAE: Go ahead.  
6 MR. TOLMAN: Well, I had said earlier  
7 that I thought any kind of new electrical generating  
8 capacity in Delaware ought not to emit large amounts of  
9 carbon dioxide into the atmosphere. And I just wanted to  
10 reiterate that I think that ought to be a threshold  
11 requirement, rather than something that comes out of the  
12 point counting.  
13 And the reason for that is that Delaware  
14 is likely to suffer unusually as the climate changes  
15 because of its coastal location and its general low  
16 elevation.  
17 The sea level rose a foot at Lewes  
18 during the past century and is likely to rise two to four  
19 feet and perhaps much more in the coming century. Part  
20 of the uncertainty and part of the possibility for much  
21 more sea level rises is the Greenland and the West  
22 Antarctic ice sheet are melting much more rapidly than  
23 people thought even a few years ago.  
24 So, Greenland last year, for example,  
0363  
1 lost 57 cubic miles of ice up from about 19 cubic miles  
2 just a few years earlier.  
3 The West Antarctic ice sheet loss 36  
4 cubic miles of ice.  
5 So, we can be looking at very  
6 substantial sea level rise by the end of the century.  
7 And that is why it is so important that we not contribute  
8 to this problem by putting large amounts of CO2 into the  
9 atmosphere.  
10 And that is why I suggest that if  
11 someone is going to be using for fossil fuels for new  
12 electrical generation, it has to be with carbon capture  
13 and sequestration using the best available technology.  
14 Thank you.  
15 CHAIR McRAE: Somehow I think somebody  
16 said that before.  
17 COMMISSIONER WINSLOW: You are  
18 absolutely right.  
19 CHAIR McRAE: Thank you, Mr. Tolman.  
20 MR. CHERRY: Madam Chair. Back to 10.  
21 CHAIR McRAE: Back to 10.  
22 MR. CHERRY: I'm not sure who to address  
23 this question to, whether it is Staff, or the company,  
24 or, perhaps, Bluewater. But this whole letter of credit

0364

1 issue is of interest.

2 Is a company's ability to get a letter  
3 of credit dependent upon their fuel source? Obviously, a  
4 lot is dependent upon their fuel source.

5 But to what advantage or disadvantage is  
6 it to, say, a wind generator to require this letter of  
7 credit?

8 MR. MANDELSTAM: Madam Chair, may I  
9 respond?

10 CHAIR McRAE: Please.

11 MR. MANDELSTAM: Financial institutions  
12 look at power projects, sometimes the same, sometimes  
13 different. Obviously, a wind project, there is no fuel  
14 risk. The fuel is free. You paid the upfront capital  
15 cost. So, the operation and maintenance is very, very  
16 modest and totally predictable. It has stable price  
17 power.

18 When you go into the market to buy a  
19 letter of credit that is, obviously, a factor that the  
20 entity giving the letter of credit look at. Of course,  
21 you will get a slightly better price with a wind power  
22 project than you would could comparable fossil project,  
23 all of the things being equal.

24 MR. CHERRY: Thank you.

0365

1 CHAIR McRAE: His office has a vote.

2 You should answer all of his questions.

3 MR. MANDELSTAM: Thank you, Madam Chair.

4 CHAIR McRAE: Are we ready to move to  
5 Item 11?

6 MR. GEDDES: Nice and short, Madam  
7 Chair.

8 CHAIR McRAE: Term sheet.

9 MR. GEDDES: May I clarify the issue.

10 CHAIR McRAE: Please.

11 MR. GEDDES: Madam Chair, Members of the  
12 Commission.

13 This really relates to the issue of  
14 whether the terms and conditions should be considered  
15 nonnegotiable, or whether it should have a mix of  
16 negotiable and nonnegotiable terms. The nonnegotiable  
17 being clearly indicated to the bidder.

18 It is Staff's position that having both  
19 types of conditions makes the negotiation process,  
20 perhaps, easier, because if you think about it, if the  
21 company can only go into the negotiations with a take it  
22 or leave it position, it probably will make it more  
23 difficult to come to an agreement.

24 And so the idea was to include

0366

1 nonnegotiable terms, along with negotiable terms to give  
2 the possibility of some give and take. That is the only  
3 difference that is really set forth here.

4 CHAIR McRAE: Well, my understanding  
5 was, and maybe Delmarva would may weigh in on this, as  
6 well, is that Delmarva was proposing that there would be

7 a set of key terms that are this is the deal.  
8 And they were not adverse to additional  
9 terms beyond those key terms being negotiable.  
10 Was that basically --  
11 MR. WILSON: That's correct, Your Honor.  
12 CHAIR McRAE: And Staff is offering  
13 negotiation. Are you suggesting that everything is  
14 negotiable?  
15 MR. GEDDES: No. We are indicating  
16 that, perhaps, the terms and conditions could have  
17 negotiated terms, as well as nonnegotiable. But clearly  
18 indicate which ones are in which category. The terms and  
19 conditions should not just be limited to nonnegotiable  
20 items.  
21 CHAIR McRAE: Okay. So, you are in  
22 violent agreement on the fact that there can be a set of  
23 nonnegotiable terms. And then, there are some others  
24 that --  
0367  
1 MR. GEDDES: I think we can work through  
2 this, Madam Chair.  
3 CHAIR McRAE: That sounds like it can be  
4 easily done.  
5 CHAIR McRAE: Moving on. Bid  
6 evaluation. Mr. Kempton.  
7 MR. KEMPTON: Willett Kempton again. I  
8 want to address the weighting of factors within price.  
9 Price is allocated 60 percent of the weight in judging  
10 bids. The price factors altogether. And within that,  
11 the final consultant's report suggested 20 percent for  
12 price stability and 33 percent for expected price. It is  
13 sometimes called price and sometimes called expected  
14 price. I think it is clear to use expected price for  
15 this subordinate category.  
16 The prima facie, it seems odd, that  
17 price stability, which is the first criterion of the  
18 legislature is weighted below this expected price factor.  
19 Now, when reading through the documents  
20 carefully and talking to some Staff it is justified as  
21 common industry practice. And I know that some of the  
22 participants in these deliberations believe that giving a  
23 high weighting to expected price will lead to lower  
24 electric cost for ratepayers. I believe that the  
0368  
1 opposite is the case.  
2 As the rules are now written, bidders  
3 can base their expected price on the cost of a facility  
4 without CO2 capture. That is allowed. And that means  
5 that, in particular, for carbon taxes, those will be  
6 explicitly allowed to be passed onto the ratepayers.  
7 So, whether or not that clause of  
8 passing on is allowed, there is a great deal of  
9 uncertainty in the future cost of carbon emissions,  
10 especially, over the time periods that we are talking  
11 about.  
12 So, by having one or other means of  
13 passing those costs on, that means that we are not

14 achieving price stability. And by putting such high  
15 weight to expected price, which explicitly can exclude  
16 some carbon cost, we are encouraging bids, I would argue,  
17 that hide these future costs.

18 I would urge the Commission to consider  
19 that these rules do motivate bidders to discourage them  
20 from including carbon capture.

21 Now, according to Bechtel Engineering,  
22 Department of Energy, a study by the University of  
23 Chicago, the Energy Information Agency, costs of future  
24 carbon emission in this sort of first few years of

0369

1 operation of plant built in 2013 could range from \$30 to  
2 \$50 per megawatt hour. Those are controversial. They  
3 have large air bars around them. But this is not a small  
4 number, and I think are not coincidentally, it is not so  
5 different from the fuel price escalation that we saw  
6 recently.

7 So, I would argue that we are facing the  
8 same situation that brought us the 57 percent increase in  
9 electricity prices. Previously, we froze utility rates,  
10 as if there would be no fuel price increases. With the  
11 current weighting of bid factors, we are in danger of  
12 favoring the bid with the lowest expected price as if  
13 there would be no CO2 constraints.

14 CHAIR McRAE: Well, there is an offset  
15 on points with respect to emission within that numbering  
16 criteria, point value. And in addition to that, perhaps,  
17 the Staff and consultant would like to offer their  
18 comments in that regard. But it does strike me as that  
19 was one of the contracts terms that could --

20 MR. GEDDES: Would you like Staff to  
21 comment now?

22 CHAIR McRAE: Yes. In fact, I would.

23 MR. GEDDES: I would ask Mr. Sheingold  
24 to comment.

0370

1 MR. SHEINGOLD: You are correct in that  
2 the environmental factor has 14 points. It is a nonprice  
3 factor. We are looking within that as emission rates as  
4 subcategories and that will all be considered.

5 I think the other key things are, it is  
6 the seller's responsibility to comply with current and  
7 future environmental requirements so that the seller is  
8 responsible for the cost. This is the change in law  
9 issue that we talked about. That may be coming later. I  
10 just wanted to say, that is an important part of it.

11 And the economic analysis is going to be  
12 looking at the cost of compliance in the future.

13 The third element of that -- Issue 17 --  
14 the third element of that which, I think, is another  
15 issue is, what happens if there is BTU or carbon tax.  
16 And, I guess, we are addressing that later.

17 CHAIR McRAE: Do I hear Mr. Geddes  
18 saying wait until 17?

19 MR. GEDDES: I am trying to help my  
20 consultant, Your Honor. Stay on message. I think the

21 issue here doesn't relate to those specific issues at  
22 this point in time.

23 But with regard, if I might clarify,  
24 with regard to the issue of price and price stability, if  
0371

1 you look through the statute itself, you will see the  
2 reference to price or the lowest effective price or  
3 lowest reasonable price, five or six times. I think  
4 price is an important criteria in terms of the  
5 legislation. And price stability is mentioned twice, as  
6 indicated this morning, in one particular part of the  
7 statute. But certainly price is an important criteria  
8 for the IRP and ultimately the ultimate bid.

9 CHAIR McRAE: Mr. Kempton, and then Mr.  
10 Cherry.

11 MR. KEMPTON: I was not addressing price  
12 versus environmental factors. I was addressing price  
13 versus price stability. So, I don't think that is  
14 addressed by saying we will put all of the price  
15 stability issues on environmental factors.

16 It is a question of whether expected  
17 price should be weighted much more than price stability.  
18 That is the question I'm addressing.

19 Although, it's good that the point  
20 factor will reflect that. That is an improvement in  
21 earlier drafts. We are talking about a contract for a  
22 PPA for a certain amount of time. And the minimum  
23 possible is 10 years, which would be qualifying. Let's  
24 say we get a 10-year contract. At the end of those 10

0372  
1 year, we have a billion dollar facility, which is a big  
2 carbon emitter, and now we are going to be asking how  
3 much is the power from this going to cost. We take these  
4 estimates from independent studies, the Federal  
5 Government and Bechtel Engineering, it's going to be a  
6 big price ramp up.

7 So, the question I am asking is, does it  
8 make sense to weight expected price much more than price  
9 stability within price weights.

10 And I am appealing, to the extent that  
11 there is a remedy here, that the Commission reverse that  
12 order. That expected price be given more points -- sorry  
13 -- price stability, which Delmarva has defined very  
14 clearly, price stability be given more points and  
15 expected price be given less than price stability, which  
16 I believe is also the intent of the legislation.

17 MR. CHERRY: I want to come back, just  
18 for a moment, to the carbon issue. The consultant talked  
19 about bidders being responsible for compliance. And yet,  
20 I also heard Mr. Kempton suggest that bidders could bid  
21 without including the cost of compliance.

22 So, is it really both ways that they can  
23 bid without the cost of compliance, but it is their  
24 responsibility to in the first place and how do we weigh

0373  
1 that when the bids come in?  
2

MR. SHEINGOLD: They are responsible for

3 complying with existing laws and future laws as they  
4 apply.

5 So, the scenario, if, in fact,  
6 environmental laws get more restrictive that require  
7 additional cost to be incurred by a seller, they do not  
8 get to recover that cost in their price.

9 MR. CHERRY: Right.

10 MR. SHEINGOLD: There is the exception  
11 if it's a BTU or carbon tax, we will talk about that  
12 later.

13 MR. CHERRY: One other question,  
14 Mr. Kempton.

15 You talked about dollars per megawatt  
16 hour. I'm just more familiar with dollars per ton of  
17 CO2. Do you have a conversion on that, rule of thumb?

18 MR. FIRESTONE: This is Jeremy  
19 Firestone. Approximately, \$10 per metric ton from a coal  
20 plant would be equivalent to close to one cent per  
21 kilowatt hour or \$10 per megawatt hour.

22 MR. CHERRY: Once more.

23 MR. FIRESTONE: That would be for coal.  
24 If it was natural gas, it would be less. I think it is  
0374

1 about -- I said it's about one cent per kilowatt hour. I  
2 think the actual is .914 cents per kilowatt hour.

3 MR. KEMPTON: But the expected cost of  
4 carbon taxes is similar to the cost increase we saw from  
5 fuel price increases. That is why it is translated to  
6 megawatt hours. It is a price stability issue. It keeps  
7 getting framed in environmental issue. This is a price  
8 stability issue is the point I am making.

9 MR. FINFROCK: If I could interject,  
10 also. Under Delmarva's evaluation --

11 CHAIR McRAE: Excuse me. This gentleman  
12 had his hand raised. Then you will have your  
13 opportunity.

14 MR. FIRESTONE: On the issue of price  
15 versus price stability, I would direct the Commission to  
16 the Staff's own report, which says on Page 13, quote,  
17 That the purpose of the RFP is to solicit a long-term  
18 physical head for Delmarva SOS customers for price  
19 stability purposes.

20 That sentence encapsulates what we  
21 believe the dominant purpose of this RFP is, price  
22 stability. If it is dominant purpose it should have the  
23 greatest weight, not price.

24 I would also, in response to  
0375

1 Mr. Geddes, two responses. First, yes, the statute  
2 mentions lowest price, more often than it mentions price  
3 stability. But he is mixing apples and oranges.

4 As I said earlier, if we just look at  
5 the provision dealing with the RFP, it talks about price  
6 stability. It does not talk about lowest cost. He is  
7 referring to the IRP. We are here discussing the RFP.

8 Secondly, if you weight price more than  
9 the environment, then you are suggesting that a one cent

10 per kilowatt reduction in price is more highly valued  
11 than a one cent per kilowatt environmental benefit.

12 Now, if you pass through carbon, this  
13 becomes particularly problematic because you are only  
14 getting 14 potential points on the environment, but you  
15 are getting more points on the price side. And so, then,  
16 there is an incentive to not capture carbon because there  
17 is more points on the price side.

18 CHAIR McRAE: You said 14 potential  
19 points on the environment. But I recall reading, I think  
20 it is in Delmarva's writing when there was some proposal  
21 by the consultant to adjust the points, that a part of  
22 the 20-point spread includes the emission, which is tied  
23 to -- well, it has a price component and an environmental  
24 component, as I recall. So, the 14 points is not a

0376

1 stand-alone. That is my recollection. I see a nod over  
2 there from Delmarva.

3 So, we are really not talking just 14  
4 points when you look at other components of price that  
5 take into consideration, which, I think, emissions is in  
6 another section.

7 MR. FIRESTONE: That is what I am  
8 saying.

9 The environmental benefit section, you  
10 get a total of 14 points. The price section is currently  
11 drafted and you get 33 points. Because the price  
12 component is so much higher, weighted, there's an  
13 incentive not to address environmental benefits because  
14 you're better off by getting more points if you come in  
15 with a lower bid, even if you are externalizing all of  
16 the environmental benefits onto people who live in  
17 Delaware.

18 And if we were to think about this  
19 rationally, there is no rational basis for weighting  
20 price more than the environment. If anything, we would  
21 weight the environment more than price because there are  
22 more individuals, for example, in the State of Delaware,  
23 that are going to feel the effects of environmental  
24 degradation than there are Delmarva customers.

0377

1 CHAIR McRAE: My sense is that the  
2 margin is more narrow. I will move on to Delmarva, who  
3 had a comment and then to Mr. Geddes. And I'm going to  
4 look for what I was looking for. Fine.

5 MR. FINFROCK: Madam Chair, you  
6 addressed the concern I was going to bring up, that the  
7 environmental issue both covered in the 14 nonprice  
8 points, as well as in the price stability part of the  
9 economic evaluation.

10 CHAIR McRAE: Exactly. Which makes the  
11 margin actually less than what you're suggesting because  
12 it does have double application.

13 Mr. Geddes.

14 MR. GEDDES: My only point of  
15 clarification, from Dr. Firestone is, yes, I will agree  
16 that most of the references to lowest cost deal with the

17     IRP and not the RFP.

18                     But if we skew this bidding process in  
19     such a way that we have very environmentally efficient  
20     contracts that have very high price units, when we get to  
21     the next step, as I believe Commissioner Clark taking my  
22     metaphor said, This is the primaries and the next step  
23     may be the election, we are going to have a contract, one  
24     or two, or whatever comes out of this process that is not  
0378

1     going to do very well in that IRP.

2                     And so, then the question is, Why are we  
3     going through this exercise to have several bids who may  
4     not get through the next -- through the general election.

5                     And so, I think that has to be a  
6     balance. And clearly, people disagree. There is no  
7     right answer here. We were trying to balance the two.

8                     But also understanding that whatever  
9     comes out of this process has to be placed in that second  
10    phase of this.

11                    And as part of the legislation, the RFP  
12    as it clearly states under Section 1007 says, As part of  
13    the initial RFP process. This is, if you will, the first  
14    step in this process, which is to go through this  
15    evaluation, try to obtain these bids, evaluate them and  
16    then integrate them into what comes next.

17                    CHAIR McRAE: These are also on the  
18    evaluation. I saw Mr. Muller. And I see NRG.

19                    MR. LONG: Madam Chair, with respect to  
20    Mr. Kempton's comments a minute ago.

21                    If the gentleman was suggesting that we  
22    need not in this evaluation process provide a company  
23    that does not include carbon capture with an incentive on  
24    the price mechanism, on the price evaluation, we would

0379  
1    agree with that concept.

2                    For NRG's project, we proposed bidding  
3    this facility with carbon capture. In fact, we suggested  
4    this in other states, as well. And what we found is,  
5    that has opened the door for other bidders to come in  
6    with other forms of clean coal technology or what have  
7    you and proposed bidding. And those types of  
8    technologies, which, I think as you identified, are  
9    substantially less costly than these projects that don't  
10   necessarily meet the environmental goals of the states  
11   moving forward.

12                    So, it is imperative, as we get into  
13   this process, that as companies step forward and do start  
14   to look at carbon capture and sequestration, that those  
15   bids be considered without being penalized against  
16   somebody else who does not propose that type of  
17   technology.

18                    CHAIR McRAE: I know Mr. Cherry is  
19   delighted to hear your strong advocacy for carbon  
20   capture.

21                    Mr. Muller.

22                    MR. MULLER: Thank you. I haven't been  
23   here for all of the discussions today, obviously.



24 But the arguments, I think, comments by  
0380

1 Mr. Kempton and Mr. Firestone are quite convincing on  
2 this point, and we endorse them.

3 Because all of these discussions become  
4 very abstract, I would like to present you with a couple  
5 of facts from work that we have been doing recently.

6 One is that Delaware's power plants now  
7 emit 275,000 pounds a day of health damaging air  
8 pollutants. And according to a letter written in  
9 February of last year by Gus Rivera, Delaware's Director  
10 of Public Health, these emissions are shortening the  
11 lives of 95 Delaware residents each year causing 13,000  
12 lost work days, 87 hospitalizations, 2,256 asthma attacks  
13 and so on and so forth.

14 My point is, when you look at price, it  
15 may have very little to do with the cost. The price of  
16 electricity, as it would be defined by the Commission  
17 Staff and by Delmarva and so on isn't the cost to the  
18 Citizens of Delaware. It's not even a fraction of that  
19 cost.

20 And the situation in which we are in is  
21 due to a historic failure of both the Public Service  
22 Commission and DNREC to regulate the utility industry  
23 effectively so that the power plants are not killing with  
24 people and so that the cost is not out of all proportion  
0381

1 to the price.

2 So, if, in fact, this process and the  
3 integrated resource planning process is going to open a  
4 door to doing things better to regulating our utilities  
5 in such a way that the public interest is protected, the  
6 public health is protected, then we are going to have to  
7 use a different kind of weighing and scoring and  
8 balancing and all that, then the utility regulatory  
9 process is accustomed to use and going to have to use one  
10 very different than what Delmarva has proposed and,  
11 indeed, what the Staff has proposed. And, in fact, we  
12 need to cast a net wide enough to capture the actual  
13 consequences of the alternative decisions that get made.

14 And if you allow people to buy into the  
15 process with the supposition that at some time in the  
16 future, they will pass through to the ratepayers the  
17 costs of carbon dioxide capture, the cost of emission  
18 abatement, that is simply inviting a low ball, inviting  
19 something that grossly distorts the process. And I think  
20 that we all need to be wise enough to make sure we don't  
21 allow that happen because this happened in Delaware for  
22 many years and many hundreds of Delawareans have paid  
23 with their lives for those errors of judgment. So, let's  
24 not continue to make those errors in judgment.

0382

1 Thank you.

2 CHAIR McRAE: The pass through issue  
3 that you referred to is covered in 17, and we have not  
4 gotten that. And earlier we did make the statement, not  
5 that it necessarily fully addresses the concern that you

6 raised, but the fact of the matter is, all of the  
7 environmental concerns and the health consequences  
8 associated with that are not going to be completely  
9 addressed in this RFP. It, unfortunately, is not a  
10 panacea. It certainly is a thrust. And there are a  
11 number of other initiatives in Delaware.

12 But I think in our best thinking, it  
13 would be very difficult for this RFP to address all of  
14 the concerns that you have raised. And I don't want to  
15 raise your expectations to assume that will be the case,  
16 but I am, indeed, mindful of the points that you have  
17 made.

18 Do you have something to say with regard  
19 to 12 which is the bid evaluation?

20 MR. CITROLO: Yes, Madam Chair.

21 CHAIR McRAE: Mr. Citrolo.

22 MR. CITROLO: My comments are in regard  
23 to price stability.

24 First, I would like to mention, also,

0383

1 that we agreed with the University of Delaware's Marine  
2 Study in increasing the weighting factor for reductions  
3 in environmental impact. I don't need to speak to that.  
4 I think they made a persuasive argument on their own.

5 In regards to price stability, many  
6 times, almost all of the time, our office is before you  
7 arguing for the lowest rate. And, I think, in this case,  
8 since we are talking about the SOS provider, we might not  
9 be doing justice to our constituents in this case.

10 The analogy I would use if I'm in my jet  
11 approaching the aircraft carrier SOS, and would peer in  
12 my kaleidoscope and hopefully have a straight line to  
13 minimize the impact of the pitch.

14 I think that is the objective of the SOS  
15 provider for customers is, one, to make sure that the  
16 electricity still flows, obviously. But with regard to  
17 price, that they have a stable price to look at. That  
18 price maybe -- most likely is not going to be the lowest  
19 price available and it may even be a few ticks higher  
20 than a market price, but that is the objective of the SOS  
21 provider, regardless of the environmental impacts. Those  
22 factors will be there, as well.

23 I think it needs to be price stability  
24 and would undermine the SOS process if we focused on

0384

1 lowest applies and not the stability factor. Thank you.

2 MR. MANDELSTAM: Madam Chair.

3 CHAIR McRAE: I'm sorry. You did  
4 indicate you wanted to speak. I apologize for passing  
5 you.

6 MR. MANDELSTAM: Thank you, Madam Chair.  
7 Peter Mandelstam. Bluewater Wind.

8 A brief comment and then a brief  
9 question. I certainly don't want to make more work for  
10 the Commission or the Staff, but there was a mention on  
11 this page of a test bid process.

12 And I would like to commend all of you

13 that in my experience with other groups that are doing  
14 this exercise, it's always very important, typically when  
15 you are looking at technologies you may not have seen  
16 before, to go through a test bid process before. Again,  
17 I don't want to make work for the Staff and consultants,  
18 but I think it would be incumbent upon the entities  
19 reviewing these projects to try to do some analytical  
20 analysis prior to receiving bids or, perhaps, upon  
21 receiving bids. The consultant mentioned, and I just  
22 echo I think it would be a terrific idea.

23 CHAIR McRAE: I do believe, and I don't  
24 know if it responds directly to your question, but your  
0385

1 consultant, ICF has some technology. Is that, Mr.  
2 Wilson, tied to testing the bid?

3 MR. GEDDES: Madam Chair, that's Issue  
4 15. I thought that was part of my job is to try to  
5 focus.

6 CHAIR McRAE: I know there is something  
7 with ICF. Maybe they can think about it until we get to  
8 Item 15. And that may clarify where you are.

9 MR. WILSON: We will address it at that  
10 time.

11 MR. MANDELSTAM: One final point, Madam  
12 Chair.

13 While I certainly applaud any reduction  
14 in plant emission, I have a question for the Staff. It  
15 is said if an existing plant reduces emissions at a  
16 functioning plant, that they would gain points in this  
17 RFP which is new generation RFP. I don't understand how  
18 it is that one earns points for reduction of an existing  
19 plant if the RFP is to promote new generation.

20 MR. GEDDES: Would you like us to answer  
21 that, Madam Chair?

22 CHAIR McRAE: Yes.

23 MR. GEDDES: I would defer to  
24 Mr. Sheingold.

0386

1 MR. SHEINGOLD: If there's a commitment  
2 to reduce emissions at another plant, so on a net basis,  
3 there would be an improvement in emissions, then, that  
4 would be considered in the analysis. But there would  
5 need to be a valid commitment to reduce emissions, as  
6 opposed to saying that I'm going to build this plant that  
7 will have the impact of reducing emissions of another  
8 unit that I have.

9 So, that, we thought, was appropriate.  
10 And if a bidder came in with a commitment to reduce  
11 emissions at another unit, that would be appropriate to  
12 consider.

13 CHAIR McRAE: My understanding of that  
14 was, it was an emission reduction over and above whatever  
15 the legal requirement was for the emission that that  
16 would be considered as a component of emission reduction,  
17 or recognized as emission reduction.

18 Was that the essence?

19 MR. SHEINGOLD: I think there are a

20 number of comments. There's one as to whether that  
21 should be done at all. And then, there were some  
22 comments about whether there would need to be a legally  
23 valid commitment to do that, as opposed to just saying,  
24 Gee, I'm going to put in new unit and it will have the

0387

1 effect of reducing another units output.

2 So, our position is, there would need to  
3 be a specific commitment.

4 MR. MANDELSTAM: With all due respect,  
5 Madam Chair, doesn't that the discriminate against  
6 generators that don't have emissions. Shouldn't I go out  
7 and buy a coal plant and then promise to reduce  
8 emissions. I don't understand why that is a factor in  
9 this RFP.

10 CHAIR McRAE: Let Mr. Sheingold speak to  
11 that.

12 MR. SHEINGOLD: I think it's valid. I  
13 don't think it is discriminatory. Anybody could obtain a  
14 commitment to offset emissions elsewhere. But it would  
15 need to be a valid commitment. And, I think, if that  
16 results in some environmental improvement or offset in  
17 emissions, it should be considered.

18 MR. MANDELSTAM: If I may, by that  
19 logic, shouldn't I buy REC credits or CO2 credits  
20 somewhere else in order to win points in this bid.  
21 Doesn't that really frustrate the whole purpose of this  
22 RFP? It seems silly to torture the process by simply  
23 meeting this requirement.

24 MR. CHERRY: Is it really a requirement,  
0388  
1 though?

2 MR. SHEINGOLD: It is not a requirement.  
3 It gives bidders an option.

4 MR. CHERRY: Isn't that being  
5 illustrative of the kind of thinking that might go into  
6 an analysis of bids. Is it anywhere in the formula of  
7 evaluation and how points are to be awarded? Or is it  
8 merely illustrative in your report of how it might work?  
9 I'm very curious for the answer to that.

10 MR. SHEINGOLD: I think once we get into  
11 the bid evaluation, we need to look at the mechanics.  
12 But we would be looking at the emissions from the bid  
13 unit and looking at the commitment that would need to be  
14 valid over time at what the reduction would be from what  
15 they would otherwise legally --

16 MR. CHERRY: Doesn't that, then, put the  
17 existing emitter at an advantage over that bidder who is  
18 not currently emitting? Doesn't that reward for,  
19 perhaps, past performance, bad performance? I'm curious.

20 MR. SHEINGOLD: The question is, one  
21 could get offsets from elsewhere. It is done elsewhere  
22 in the country in terms of compliance. But I think the  
23 ability to make commitment to obtain offsets, one could  
24 buy them, presumably. Obviously, if you are a wind

0389

1 project, you really don't have any emissions to offset.

2 But is it in the public interest to  
3 encourage that kind of offset of emissions? I would  
4 think it would be.

5 MR. MANDELSTAM: Perhaps, in the public  
6 interest, but is it in this RFP.

7 CHAIR McRAE: Excuse me.

8 MR. MANDELSTAM: I apologize, Madam  
9 Chair.

10 CHAIR McRAE: I believe that  
11 Mr. Cherry's question, though, was, was that offered as  
12 something for which points could be awarded. And my  
13 understanding from what I read was, yes.

14 Is that accurate?

15 MR. SHEINGOLD: It would be considered  
16 in terms of the net emissions for which points would be  
17 given. There would be specific levels of emission that  
18 would get points, for example, within greenhouse gasses  
19 there would be four points, and we would look at  
20 different emission levels within that and to grant  
21 points. And, obviously, if there are no emissions, you  
22 get the maximum points.

23 CHAIR McRAE: But I just wanted to make  
24 sure that we were clear. The short answer to the  
0390 question is, yes.

1 MR. SHEINGOLD: Yes. It would be  
2 considered.

3 CHAIR McRAE: Now, where are we? We are  
4 still on bid evaluation.

5 Mr. Firestone.

6 MR. FIRESTONE: Just on the same point.  
7 It would seem that if someone like a wind power generator  
8 had existing wind power generation that produced no  
9 pollutants, they should get credit for what they have  
10 done in the past, rather than just benefit people who are  
11 polluting now and who might reduce that pollution in the  
12 future.

13 CHAIR McRAE: I supposed there are a  
14 couple of ways to look at it. To some extent, any  
15 reduction is a benefit to the system, to the ecosystem,  
16 any reduction is. One could also look at it from that  
17 vantage point. It is something that is a part of this  
18 whole balancing discussion that we are having to some  
19 extent. Reduction in emissions is good.

20 But I also understand Bluewater's  
21 concern here it would seem to give a decided advantage to  
22 someone over the party who is presenting no emissions at  
23 the outset.  
24

0391

1 So, I mean, I think I understand the  
2 argument. I am confidence my fellow Commissioners and  
3 Mr. Cherry does, as well.

4 So, with that said, Mr. Muller.

5 MR. MULLER: This question of emission  
6 offsets is a complicated game that people in the power  
7 plant business are good at playing.

8 But I think a couple of points ought to

9 be made here before you depart from this subject.  
10 There is an initiative in Delaware to  
11 require power plants to reduce their emissions. You are  
12 aware of it.

13 CHAIR McRAE: Yes.  
14 MR. MULLER: I am sure you are aware our  
15 friends in Conectiv Generation and NRG are fighting very  
16 hard against that proposal. They object to it.  
17 If, in fact, they were succeed in  
18 defeating this proposal, then, you could create a  
19 perverse situation where they could then claim credit for  
20 voluntary reductions that were voluntary because they  
21 succeeded in defeating the enactment of regulations  
22 requiring more.

23 Secondly, a key point in this regulation  
24 is to not allow this sort of emission trading that would  
0392 enable emissions reductions somewhere else to result in  
2 emissions either continuing or increasing in Delaware.  
3 So, we have here now an RFP for new  
4 generation in Delaware, basically. And if you allow an  
5 offset program of a sort that could allow increased  
6 emissions in Delaware in return for theoretically reduced  
7 emissions somewhere else, that would surely be  
8 inconsistent with the intent of the legislature in  
9 enacting the statute that generated all this.

10 So, I don't think that such a provision  
11 ought to be part of the bid evaluation process.

12 CHAIR McRAE: Okay.  
13 MR. LONG: Just briefly, Madam Chair. I  
14 want to correct something that Mr. Muller just said.  
15 NRG Energy is not in opposition and has  
16 not been fighting the regulations before DNREC. In fact,  
17 if you look at the record, we have been extremely  
18 supportive for most of the regulations.

19 What we have done, like Green Delaware  
20 and some of the other folks in the room is, we provided  
21 specific comments on how those regulations can better  
22 work within the paradigm that we are all operating in.

23 Thank you.  
24 MR. MULLER: Not true.

0393 CHAIR McRAE: Well, we are going to move  
1 on. We have heard two sides here. I am not the judge.  
2 Mr. Citrolo.  
3 MR. CITROLO: Madam Chair, one other  
4 issue.  
5 Since it appears on the issue sheet  
6 under No. 12, our comments were summarized here that the  
7 evaluation process should include the Public Advocate's  
8 Office. That does pertain to all issues. I just thought  
9 I mention here, we have concerns that the public, the  
10 consumers are not going to be represented at the  
11 evaluation process, given the current structure of the  
12 RFP. Thank you.

13 CHAIR McRAE: That is a point. I have  
14 to look to Mr. Geddes to see if it is somewhere else at  
15

16 this point. It certainly was raised in the writings.  
17 Somewhere I saw that comment from the Public Advocate  
18 when the bids are in, Delmarva will do an evaluation and  
19 our consultant is involved and the Public Advocate raised  
20 an issue as to their not having a space in that process.

21 MR. GEDDES: Madam Chair. I think  
22 that's a good miscellaneous issue. The issue of  
23 transparency.

24 Staff supports transparency in the  
0394

1 process, but does understand some of the modeling that is  
2 going to be is priority. But we have no objection to  
3 making this as transparent as possible.

4 CHAIR McRAE: You have heard that,  
5 Mr. Citrolo. You can talk around that at a subsequent  
6 time.

7 We have a number of miscellaneous  
8 issues. I hope we don't address them all today because  
9 darkness is going to descend on us soon.

10 We have the T&D evaluation. I'm sorry,  
11 Commissioner Clark.

12 COMMISSIONER CLARK: Is it appropriate  
13 to address the proposal regarding the super categories.

14 CHAIR McRAE: Yes. That is a part of  
15 the bid evaluation.

16 CHAIR McRAE: Super categories. Do you  
17 recall that section that the independent consultant,  
18 Mr. Sheingold proposed.

19 MR. GEDDES: Yes. We did propose that  
20 and believe that it is an appropriate way to make sure  
21 that the valuation process is not skewed, in one  
22 particular way, and these particular criterias are kept  
23 in focus.

24 I know that the company believes this is  
0395

1 some secondary scoring system. But that was not meant to  
2 be the way it should be employed in the evaluation  
3 process.

4 We believe that these areas are critical  
5 and that the proposals that are received should be  
6 balanced. And it is possible, we believe, without these,  
7 what we call super criteria, that a particular bid could  
8 be unbalanced and not have some minimum scoring in these  
9 areas. So, sort of like super primaries, Commissioner  
10 Clark.

11 CHAIR McRAE: Did you have a question on  
12 that, Commissioner Clark?

13 COMMISSIONER CLARK: Basically, you talk  
14 about the concept of having them. Do we need to have a  
15 more of a scoring system in place if we go that route?

16 MR. GEDDES: Well --

17 COMMISSIONER CLARK: Or is it an --

18 MR. GEDDES: It may seem a little  
19 consistent with our big funnel process. But it was to  
20 make sure as we go through this there was another filter.  
21 It is not a secondary scoring process. But it is a way  
22 to make sure, as the bids are evaluated, that certain

23 characteristics of those bids meet these minimum super  
24 categories.

0396

1 CHAIR McRAE: When you look at them on  
2 its face, project viability would seem to be a threshold  
3 issue for the whole deal, if you will. But I do realize  
4 there was further iteration in the writings about what  
5 you meant by project viability.

6 But just looking at that on its face,  
7 favorable characteristics, all of them would seem to  
8 fall under the broad umbrella of what you are trying to  
9 decided in the first instance.

10 MR. GEDDES: And the Commission may find  
11 this a helpful suggestion or maybe not. And, I think,  
12 clearly the Commission could say, Well, Staff, that is  
13 interesting, but we don't think it's necessary. And we  
14 favor the company's position of not having any super  
15 category.

16 COMMISSIONER WINSLOW: Madam Chair, I  
17 read Mr. Firestone's and Mr. Kempton's comments. I think  
18 there is some concern there about that issue.

19 But it seems to me that the favorable  
20 characteristics, super category, would hopefully preserve  
21 those projects or weed out projects that did not give  
22 some real benefit in an environmental area and help out  
23 in that way.

24 So, I understand your concern about

0397

1 price. But I'm encouraged with the favorable  
2 characteristics about being a positive to outweigh and  
3 balance, I guess.

4 CHAIR McRAE: Thank you. Now, I think  
5 we are at T&D Evaluation.

6 MR. GEDDES: Could I try to summarize  
7 this. I think this is a less complicated issue.

8 I think the concern here is stated by  
9 NRG that any evaluation should be limited to five years.  
10 And I think Staff and Delmarva agree that there should  
11 not be an arbitrary cutoff. To the extent you are  
12 capable of evaluating these impacts for longer period of  
13 time, it should be whatever the technology allows you to  
14 evaluate and it should not be artificially cutoff at five  
15 years. I think that's the essence of the issue.

16 CHAIR McRAE: I don't see any hands.  
17 Mr. Long.

18 MR. LONG: Madam Chair, I think Staff  
19 adequately conveyed our position on the issue.

20 CHAIR McRAE: Excuse me.

21 MR. LONG: I think your Staff adequately  
22 conveyed our position on the issue.

23 CHAIR McRAE: I thought so, too.

24 Now we are dealing with imputed debt

0398

1 offset. I think we got into this slightly a little  
2 earlier today. And we're revisiting it in more detail  
3 now.

4 MR. GEDDES: With your indulgence, Madam



5 Chair, I would ask the company to go first. During the  
6 luncheon recess, a representative of the company  
7 suggested that the arguments that he was making before on  
8 security that I, perhaps, had misunderstood, and I would  
9 like him to clarify for the record the point he was  
10 trying to make earlier and how it is different from the  
11 point I thought he was making under this category.

12 MR. FINFROCK: That was me, Madam Chair.  
13 My name is Mark Finfrock again.

14 I referred to a concern that can't be  
15 overlooked and the fact that if we enter a large  
16 transaction relationship with a noninvestment grade  
17 counterparty, the credit rating agencies when they view  
18 our exposure to who we transact with would put downward  
19 pressure on our bond ratings because of that  
20 relationship.

21 That has nothing to do with imputed debt  
22 offset. It has to do with, irrespective of being on  
23 balance sheet or off balance sheet, having that strong a  
24 relationship with a noninvestment company.

0399

1 UNIDENTIFIED AUDIENCE MEMBER: Madam  
2 Chair.

3 CHAIR McRAE: Excuse me, just a second.  
4 Is your response to what Delmarva just  
5 said? Because that had nothing to do with imputed debt  
6 offset where we are. Were you responding to what you  
7 heard here?

8 MR. LONG: Imputed debt offset.

9 CHAIR McRAE: In that case, I think  
10 Delmarva was saying something. And you can follow up, if  
11 you will.

12 MR. KAMERICK: I am Tony Kamerick. I am  
13 the vice-president and treasurer of Delmarva.

14 The point I wanted to make is the  
15 imputed debt offset represents, we believe, a real  
16 economic cost that should not be relegated to some  
17 sensitivity analyses.

18 And that's because the minute we mind  
19 that long-term power contract, every one of our financial  
20 metrics that the agencies use will deteriorate. The  
21 balance sheet will get more will be leverage. Our  
22 coverage ratios go down. Our cash flow goes down.  
23 Everything deteriorates.

24 And the only way we can get back to

0400

1 even-stephen again to where we were would be for the  
2 company to add equity to offset that debt imputed by the  
3 agencies and to raise customer rates enough to earn on  
4 that equity to offset the deterioration in the cash flow  
5 and the coverage ratio.

6 So, this is something that we think is a  
7 real economic cost. And all it really tries to do is  
8 allow us to compare different alternatives on an apples  
9 to apples basis so we're sure we got all of the costs  
10 included.

11 And we believe that based on what we

12 read of the agency comments on this issue that we really  
13 should start at 50 percent as the benchmark base case,  
14 and then we can always run alternatives off of that. We  
15 think 50 percent is where we ought to start.

16 CHAIR McRAE: Mr. Long.

17 MR. LONG: Thank you, Madam Chair.

18 I think it is well established, and we  
19 would agree with Delmarva that some rating agencies are,  
20 in fact, imputing debt from long-term contracts. Our  
21 agreement, however, I think stops there. Our  
22 understanding of the issue stops there.

23 Clearly, there is an issue with rating  
24 agencies doing this. But where there isn't a nexus is

0401

1 between imputing debt from long-term contracts and  
2 actually seeing a negative impact to the company.

3 And I would submit to you that in  
4 Connecticut last year, the DPUC held a lengthily hearing  
5 on this issue where they took testimony from several  
6 expert witnesses that, quite frankly, had different  
7 opinions on it. And where they came out was, this issue  
8 would rightfully be brought before the Public Service  
9 Commission in a rate proceeding, once the utility could  
10 clearly establish that there was an actual downgrade or a  
11 negative impact to its bottom line.

12 And I would submit that might be,  
13 instead of adding, as Staff suggested, a 30 percent adder  
14 onto the contract, that it might be more prudent from a  
15 consumer standpoint to wait until there actually is some  
16 sort of a harm and have the Commission evaluate it.

17 CHAIR McRAE: Well, I can see where one  
18 might be a little uncomfortable with that, around undoing  
19 the harm. If we are speaking about Delmarva, I, frankly,  
20 do know we have had some recent experience there. So,  
21 that is an issue to be considered.

22 MR. KAMERICK: I was going to repeat  
23 probably what I already said. It is a real economic  
24 cost. You can see it in every one of the write-ups that

0402

1 we had during the period that PEPCO had power purchase  
2 contracts. Those power purchase contracts were  
3 considered debt on our balance sheet.

4 The way they do it is, they project out  
5 the cost of the power purchase over the life of the  
6 contract. They discount it to today with present value  
7 techniques. And that is added to our debt balance. So,  
8 it's clear that's in the metrics that they use when they  
9 do our rating.

10 CHAIR McRAE: Are there further  
11 comments?

12 MR. GEDDES: Madam Chair, Members of the  
13 Commission.

14 I think Staff's position is set forth.  
15 But I want to clarify to the extent, we would like to  
16 test this theory, whether it's 50 percent, or 30 percent,  
17 or zero and the recommendation here is not to arbitrarily  
18 assign anything. But to make sure we have this properly

19 analyzed.

20 We are certainly aware of what we read  
21 in the trade publications. I do not think the prior  
22 situation is relevant. It is a completely different  
23 situation than the Mirant situation. We would like to  
24 study this a little bit more before we arbitrarily assign

0403

1 any value to it.

2 And Mr. Sheingold wanted to respond to  
3 Mr. Finrock's first point, if he might.

4 MR. SHEINGOLD: I think the general  
5 point about noninvestment grade parties and the default  
6 rates for project financed projects are viewed as being  
7 different from the default rates for bonds for companies.  
8 And generally, they are lower. And this goes into loss  
9 of probability and default and a number of other issues.

10 I just want to point out, the history  
11 and practice in financial institutions will look at  
12 project financed projects differently.

13 I have more information on that, if you  
14 would like, but I just wanted to make that point.

15 CHAIR McRAE: Well, thank you. Also, I  
16 think Mr. Geddes suggested more information from the  
17 standpoint of the very specific issue that we are  
18 addressing.

19 Commissioner Clark.

20 COMMISSIONER CLARK: Just to clarify.

21 You mean, the 30 percent risk factor  
22 recommendation from your end, you want to study that more  
23 now, or maybe I misunderstood you.

24 MR. GEDDES: Yes. I will let

0404

1 Mr. Sheingold clarify that.

2 MR. SHEINGOLD: Looking at it, being a  
3 sensitivity of 30 percent, and this issue is more  
4 complex. A lot has to do with the perceived regulatory  
5 treatment. And if you actually read the Standard and  
6 Poor's analysis, it goes between 10 and 50 percent. And  
7 Moody's says there is, basically, a pass-through, and  
8 they would look at it as being zero percent.

9 We recommend that, do this analysis, we  
10 think it is probably between zero and 30 percent. They  
11 talk about if there's legislation that provides for  
12 recovery. That is a positive thing. That would be a  
13 lower percentage.

14 But if this gets to be an issue, once we  
15 get bids in, we suggest Delmarva go to the rating  
16 agencies and get some feedback directly.

17 COMMISSIONER CLARK: It is your position  
18 it does not need to be addressed now and addressed later?

19 MR. KAMERICK: Madam Chair.

20 CHAIR McRAE: Yes.

21 MR. KAMERICK: What the agencies do is,  
22 it goes from zero to 100. Not zero to 50. They start at  
23 50. That's where they start. Then they do their  
24 evaluation to determine whether they come off 50 on the

0405

1 high side or the low side.  
2 Having said that, we would be more than  
3 happy to go to the agencies and get more specifics about  
4 that.

5 MR. GEDDES: I think we have agreement  
6 on the process. And it would be, as Commissioner Clark  
7 suggested, that we would work with Delmarva and try to  
8 determine what the appropriate number should be.

9 I mean, things may change in the next  
10 couple of months. Who knows. But to arbitrarily say it  
11 should be this number or that number, I think it is  
12 somewhat dependent on what kind of bids we get. What  
13 they look like. And then, if we get the additional  
14 information from the agencies on how they would view  
15 this, I think that would be more helpful than arbitrarily  
16 assigning a value.

17 CHAIR McRAE: Well, that is slightly  
18 different from what you have here.

19 MR. GEDDES: I would say, yes, it is.  
20 We are clarifying.

21 CHAIR McRAE: Very fine.

22 MR. GEDDES: Based, in part, on  
23 Delmarva's offer.

24 CHAIR McRAE: Very good. We got that  
0406 clarified.

1 Now is test bidding.

2 MR. GEDDES: I think this is pretty  
3 straightforward. In fact, the representative from  
4 Bluewater Wind had suggested that this would be a good  
5 idea, I believe, earlier.

6 Staff is interested in trying to do  
7 this, if we have time. We understand there are time  
8 pressures. But it is something that we think would be a  
9 good idea.

10 CHAIR McRAE: The next item is default  
11 remedies.

12 MR. WILSON: Your Honor, you asked the  
13 question with respect to ICF's modeling. If you would  
14 like, I could have them explain some of that to you.

15 CHAIR McRAE: No. I just recall reading  
16 that there was some plan to use this proprietary modeling  
17 system to take a look.

18 MR. WILSON: The real constraint is one  
19 of time. We got to get all of this information and  
20 compress it and come back with an RFP that is ready to go  
21 November 1st. We set up a meeting with Staff. But it  
22 becomes an issue of how much time and what the  
23 expectations are.

0407 CHAIR McRAE: We are very sensitive to  
1 that fact.

2 Thank you, Mr. Wilson.

3 Default remedies. Does anybody want to  
4 speak, or do you want to stand on your document?

5 MR. GEDDES: I would defer to the  
6 company since it seems to be their issue.  
7

8 MR. WILSON: We stand on our comments as  
9 filed.

10 CHAIR McRAE: Very fine.

11 Changes after the contract. That got  
12 into the pass-through issue that we deferred. Change in  
13 law. Kind of get into that. Change in control.

14 MR. GEDDES: Point of clarification.

15 I think Mr. Sheingold had dealt with the  
16 first two issues. I don't think we had an opportunity to  
17 address the third. I think the discussion about carbon  
18 issues and changes in law, I think the Commission heard  
19 most of the parties on that issue and who should absorb  
20 what risk.

21 But with regard to the change in  
22 control, perhaps, the parties have additional comments,  
23 other than what is set forth here.

24 MR. MANDELSTAM: Madam Chair, does that  
0408

1 mean that that issue is closed because there were other  
2 issues that were raised on this page that Bluewater Wind  
3 did not discuss?

4 CHAIR McRAE: You are talking about the  
5 issues as to change in law or pass-through of cost versus  
6 control.

7 MR. MANDELSTAM: Pass through, Your  
8 Honor.

9 CHAIR McRAE: It was touched on. But, I  
10 think, Mr. Geddes was summarizing that we had hit upon  
11 this. But it is certainly appropriate for you to speak  
12 now, if you choose, on these issues covered here, which  
13 would pass through was on that list.

14 MR. MANDELSTAM: Just a brief question.

15 I am curious for the rationale of the  
16 PJM average as a metric, the PJM average, and what was  
17 the relationship, and how was it derived.

18 CHAIR McRAE: If there is nothing else I  
19 learned today, a brief question from you is the start of  
20 a series of about six more questions.

21 So, I will limit you to that one brief  
22 question, which I will ask someone to answer.

23 MR. GEDDES: Madam Chair, with your  
24 permission, Mr. Sheingold.

0409  
1 MR. SHEINGOLD: Yes. Starting from,  
2 generally speaking, long-term power purchase contracts,  
3 there are taxes of general applicability. They are  
4 generally a pass through to the buyer.

5 What we looked at here, particularly  
6 with regard to a coal project, if the BTU are carbon tax  
7 that would have the potential impact of having a  
8 pass-through, if it was done that way, that would be  
9 above what the market would be perceiving in terms of the  
10 impact on market prices.

11 So, we sought to limit that. And we use  
12 the average emissions in PJM because they would have a  
13 recovery up to that amount because that would be what the  
14 market would be passing on. So that the seller would be

15 responsible for the above average emissions that they  
16 would cause because they decided to built the plant. And  
17 that is the rationale for it.

18 CHAIR McRAE: Do you have a question,  
19 Commissioner Lester?

20 COMMISSIONER LESTER: No. I'm okay. I  
21 understand.

22 MR. KEMPTON: Just briefly addressing  
23 the tax.

24 I think the traditional treatment of tax  
0410

1 is because things like property taxes and sales taxes and  
2 so forth are not something that can be anticipated or  
3 controlled by merchant power providers, for example.

4 But this is very different. This is a  
5 tax which has a specific policy objective that is meant  
6 to incentivize, in this case, the bidders to provide a  
7 different facility.

8 And I appreciate Mr. Long saying that  
9 they would like to do, if I understood you, carbon  
10 capture, and by passing on the tax that has specific  
11 policy objective. It discourages his company from doing  
12 so.

13 I hope I'm not misquoting you. But this  
14 is not the same as the tax as it normally has been  
15 treatment in merchant power provision. This is a tax  
16 with a specific policy objective, which is controllable  
17 by the bidder.

18 CHAIR McRAE: Do you want to comment?

19 MR. SHEINGOLD: To give a fuller answer,  
20 the bidder will have the option of bidding with this  
21 partial pass through or not. And to the extent that they  
22 do bid it, it will be considered both in the price  
23 analysis and price stability. So, it will all be  
24 considered in the analysis.

0411  
1 CHAIR McRAE: I'm sorry. I kind of  
2 missed --

3 MR. SHEINGOLD: The bidder will have the  
4 option to bid with no potential for a pass through or  
5 partial pass through of such a tax or to bid with a  
6 partial pass through.

7 But to the extent they do that, their  
8 price score and their price stability score will not be  
9 as advantageous as if they decided to assume the full  
10 risk. So, there is no free lunch in this analysis.

11 CHAIR McRAE: If they decided to assume  
12 the full risk, I would assume that that assumption is  
13 reflected in the base price, too, which may, in fact,  
14 make it less attractive because they would be trying to  
15 cover the potential downstream cost.

16 MR. SHEINGOLD: That is exactly correct.  
17 Yes.

18 MR. LONG: With respect to the carbon  
19 tax, one of the things we proposed in one of our earlier  
20 filings, it was sort of taking this issue off the table  
21 in this discussion, by simply requiring all bidders to

22 submit a plan for carbon capture or carbon capture and  
23 sequestration in the bid.

24 In this way, the department, in its

0412

1 evaluation, could look at not only the core portion of  
2 the projects, which provide power, but also evaluate the  
3 carbon capture and sequestration issues, as well. That  
4 was my first point.

5 My second point is, if that's not taken  
6 into account, and with respect to any additional  
7 environmental regulations that may take effect, in our  
8 view, in looking at these contract as they played out, in  
9 other contracts that we have ventured into and ones that  
10 are currently being considered in other states, it is  
11 common for new laws, as they come up, to be considered  
12 pass throughs or to trigger some sort of a renegotiation  
13 on that portion.

14 And we would like to have that type of a  
15 re-opener or the ability to do that with respect to  
16 carbon tax or other laws that may change the cost of  
17 power.

18 CHAIR MCRAE: Mr. Muller.

19 MR. MULLER: Yes. I alluded to this  
20 before and other people have. But it is well known,  
21 there is no question about the fact, that any fuel  
22 burning power plant, particularly a coal burning power  
23 plant that does not capture and sequester its carbon  
24 emissions will do damage, will do harm to the

0413

1 environment. Will do harm to the future of all of us.

2 So, any bidding system that doesn't  
3 require that the full cost of that capture and  
4 sequestration be put into the bid gives an undesirable  
5 and unfair advantage to the people who want to burn coal.  
6 And it creates an artificial disadvantage, for example, a  
7 wind bidder or a conservation and efficiency bidder.

8 So, it seems evident to us on the face  
9 of things that any system for monitoring and considering  
10 these bids ought to include the full costs up front.  
11 Otherwise, if you allow a re-opener, or call it a tax, or  
12 something, as I mentioned before, it is simply a low ball  
13 that distorts the process and will hit us both in the  
14 pocketbook and in terms of rising sea level and other  
15 things at some time in the future.

16 It is a known negative consequence.  
17 That's not something that there's any question about.  
18 And, therefore, I think the Commission should fully  
19 incorporate this into its process.

20 CHAIR MCRAE: I understand the full  
21 course is known. I'm not exactly clear about what you  
22 are saying when the change occurs. I mean, it has to be  
23 incorporated. But if it is not a requirement now, then  
24 there is an impact that was not a part of, unless it has

0414

1 been anticipated and incorporated in the bid price.

2 So, when you talk about full cost, I  
3 think it should be clear with respect to the outset. But

4 what we are looking at here is some change in the law  
5 down the road that may impact that and how does that  
6 factor into the full course or who bears the cost and  
7 those issues.

8 MR. MULLER: Well, to approach this  
9 another way, the average cost of the generating units  
10 that have been discussed in DNREC's proposed regulation  
11 is 38 years.

12 There isn't any question, I don't think  
13 there is any reasonable question that long before 38  
14 years have past, it will be necessary to cap and control  
15 carbon emissions. So, there isn't any question about  
16 whether this will occur within the economic lifetime of  
17 the unit if it is built. And, therefore, it's simply  
18 like the camel putting its head in the sand to not  
19 consider this up front. This is just, in essence,  
20 passing a penalty on into the future. And I don't think  
21 it would be responsible of the Commission or the utility  
22 to do that.

23 CHAIR McRAE: Mr. Firestone.

24 MR. FIRESTONE: Yes. The Staff has

0415

1 explained that they are going to count pass through  
2 against price and price stability. But they haven't  
3 really explicitly said how they were going to do that.

4 Certainly, if we look at studies, for  
5 example, the University of Chicago study suggest that the  
6 expected price will increase by, Oh, two-and-a-half to  
7 four-and-a-half cents per kilowatt hour through carbon  
8 capture.

9 On the European market, the highest  
10 price I calculated this year on the European market for  
11 carbon was the equivalent of three-and-a-half cents per  
12 kilowatt hour.

13 So, those types of numbers should be  
14 explicitly quantified and added into the bid of anyone  
15 who wants to pass through carbon to the consumers because  
16 those are the types of costs that we can expect.

17 Thank you.

18 CHAIR McRAE: Mr. Geddes.

19 MR. GEDDES: Madam Chair. I don't think  
20 anything in the Staff's proposal precludes somebody from  
21 bidding their best estimate of what this future tax,  
22 whether it occurs or not, putting it in their bid.

23 All the Staff is suggesting is that  
24 there could also be bids that would be considered that

0416

1 does not have this potential tax included, in part,  
2 because if it's going to occur is not known and the size  
3 of the tax is difficult to know. And to try to model  
4 that into your proposal, I think, would be difficult, and  
5 I'm no computer jockey.

6 But in any event, the idea was to allow  
7 it to be bid both ways and not to preclude either one in  
8 the evaluation process, depending on how the bids come  
9 in, we'll make the determination as to whether the carve  
10 out is appropriate or not.



11 MR. CHERRY: For the record, I want to  
12 make sure I understand this. There has been some  
13 discussion about taxes. I understand the idea of carbon  
14 taxes. But there is also the cost of compliance under a  
15 cap and trade program, for instance, that Delaware is  
16 contemplating, as well as many other states. That is,  
17 not, in my view, a tax, am I correct?

18 MR. GEDDES: We are not proposing a  
19 carve out for that. That would be something that the  
20 bidder would assume.

21 MR. CHERRY: So, when we talk about  
22 passing on the cost of generally applicable taxes over  
23 and above PJM classic, we are not talking about the cost  
24 of compliance under RGGI or any other program of a

0417  
1 similar nature?

2 MR. SHEINGOLD: That's correct.

3 MR. CHERRY: Thank you.

4 CHAIR McRAE: Thank you for clarifying  
5 that, Mr. Cherry.

6 Are there other questions on the changes  
7 after the contract?

8 All right. I believe the last item  
9 before us is dispute resolution.

10 MR. GEDDES: Madam Chair. It is Staff's  
11 position that these types of disputes should be resolved  
12 in another forum. Potentially, they will be contractual  
13 in nature and not regulatory. And, therefore, we don't  
14 agree with Delmarva that you are the forum in which they  
15 should come.

16 And I hope you appreciate Staff's hard  
17 work on this issue.

18 MR. WILSON: Respectfully, Delmarva  
19 simply doesn't agree with that. In that this is an  
20 imposed process. This is not a process where we have  
21 just gone out to the market and where we are negotiating  
22 and we can accept things or we can take it or leave it.  
23 This is a process that the Commission, by legislation,  
24 has imposed.

0418  
1 Accordingly, who will best know what the  
2 intent was and what the Commission was trying to do than  
3 this body. At the end of the day, even if we went to an  
4 industry group, we still have to come back to this  
5 Commission to ratify any changes, particularly any  
6 changes that have a rate impact.

7 So, at the end of the day, we end up in  
8 front of the Commission. We can short-circuit the  
9 process, or we can take it the long way. But going into  
10 arbitration where they cannot direct Delmarva to make a  
11 change to the contract or to impose rate increases is  
12 meaningless. And we are trying to short-circuit that  
13 process.

14 CHAIR McRAE: Okay. Mr. Long.

15 MR. LONG: Thank you. We're well  
16 documented on this. I just wanted to reiterate. In this  
17 particular case, because of the Commission's relationship

18 with Delmarva, we believe that arbitration would be the  
19 best form of dispute resolution in this on disputes that  
20 arise.

21 Thank you.

22 CHAIR McRAE: I am so glad we have on  
23 the record that the Commission is aligned with Delmarva,  
24 and that's a concern. I don't believe I ever heard that

0419  
1 said.

2 If I may ask, before we move on to  
3 making some decisions on these matters, can we take a  
4 quick break. Give me, please, about five or ten minutes.  
5 Thank you.

6 (A break was taken at, approximately,  
7 4:15 p.m.)

8 (Back on the record at, approximately,  
9 4:25 p.m.)

10 CHAIR McRAE: Well, while you were on  
11 the break, I was trying to sort out how we were going to  
12 go forward on this decision making process for the  
13 Commissioners. Of course, you are free to disagree.  
14 Here are my thoughts at this time.

15 As you know House Bill 6 required the  
16 Commission, along with the Office of Energy, to retain a  
17 consultant to assist us in preparing the report that you  
18 all have before you. And the consultant, Mr. Sheingold,  
19 is also present. And then, we have an issue sheet that  
20 reflects the input of Staff who worked in close alignment  
21 with the consultant.

22 So, to simplify this process, I suggest  
23 that we start from the position of Staff, which,  
24 essentially, was articulated in this document that came

0420  
1 out as the consultant's report. And as we go through  
2 each of these items, and I know everyone has had a chance  
3 to comment here, and the Commissioners will also respond  
4 at this point, we will go through these issues. And  
5 parties who have a compelling interest from departing the  
6 Staff position would bring that forward.

7 So, we will use that Staff component --  
8 am I clear -- as a base document, as a base provision,  
9 and then we will work from that to decide where we are.

10 COMMISSIONER WINSLOW: Madam Chair, just  
11 clarification. I have no objection to that procedure,  
12 and I am not trying to pick on anybody, I hope that we  
13 don't hear the same argument a third time or a second  
14 time. In other words, if there is a position, it should  
15 be, one, perhaps, that has not been stated that we have  
16 not heard on several occasions.

17 CHAIR McRAE: Well, a good bit of the  
18 talking may come from you Commissioners, if you will.  
19 You and me. I know the parties have, basically, told us  
20 where they are. But I just need some indicator. Staff  
21 may have been so persuasive that they are willing to drop  
22 their arguments. So, if there is no issue on a page, we  
23 can move forward, and we'll just decide it as the  
24 Commission.

0421

1 Mr. Geddes.

2 MR. GEDDES: Two observations, Madam

3 Chair.

4 One, I did, in my initial comments,  
5 suggest that, perhaps, that not all of the issues have  
6 been captured on the issue sheet. Hopefully our  
7 discussion has captured all of them and there are not any  
8 issues that the parties feel compelled to bring to the  
9 Commission at this time.

10 I would think, in response to  
11 Commissioner Winslow's observation, that the parties  
12 should indicate if we're on a particular page if they  
13 have an issue there that they want, notwithstanding the  
14 fact they have commented on it, addressed it, but to  
15 bring to the Commission's attention that they want the  
16 Commission to consider that.

17 There are some subissues that I don't  
18 think need the Commission's specific decision, but there  
19 maybe one or two that are not as clear. I want to make  
20 sure that no party feels that the Commission didn't  
21 address an issue that they thought was important.

22 CHAIR McRAE: Well, supposed we start  
23 right out with the legislature prospective. And I'm  
24 looking actually for the Commissioners to offer comments

0422

1 in terms of where we are with respect to the prospective.

2 COMMISSIONER CLARK: Madam Chair, my  
3 thoughts are, we haven't gone through the IRP process  
4 yet. And what we do, I think, we want to maintain enough  
5 flexibility when that comes down the pike in December, we  
6 are able to react to that to measure both processes  
7 together, which is necessary. I guess that is a broader  
8 prospective. That's where I think I will be coming from  
9 a lot of this stuff as I go through it.

10 CHAIR McRAE: Any other parties?  
11 Commissioners?

12 COMMISSIONER WINSLOW: Madam Chair. I  
13 think I am reluctantly won over by the big funnel theory.

14 I think that the points Delmarva has  
15 made about the bid block and credit and security issues  
16 and firm deliver, et cetera, are all excellent points.

17 But I have to confess, I have an  
18 attraction for getting as much competition into the field  
19 as possible, or order as possible. Therefore, I will be  
20 a big funnel person.

21 MR. CHERRY: Let me chime in here. I  
22 think I'm of the primary versus the general election  
23 theory myself, which I would be in line with the funnel  
24 theory, as well. Bigger is better at this time. More

0423

1 inclusive is better at this point. A broader array of  
2 viewpoints and submissions from all of effected parties  
3 is better at this point than narrowing it down.

4 With all due respect to the company's  
5 perspectives, that would be my philosophy, as well.

6 CHAIR McRAE: I would add that I do also

7 share that prospective. And I think that that will be  
8 reflected as we move through this document.

9 I would err on the side of inclusion  
10 because I do believe that there are further opportunities  
11 to refine some of these issues. And, also, the issue of  
12 them being in the context of the IRP. So, I would  
13 definitely lean toward a broader look and efforts to  
14 balance.

15 And I'm assuming that we're going to  
16 need some kind of voting process here, Mr. Geddes, for  
17 the record.

18 MR. GEDDES: Yes, Madam Chair. I would  
19 suggest we have a vote.

20 COMMISSIONER WINSLOW: I move that the  
21 Commission adopt the Staff's and Independent Consultant's  
22 position on this issue.

23 COMMISSIONER CONAWAY: Second the  
24 motion.

0424

1 CHAIR McRAE: All in favor.  
2 Yea.  
3 COMMISSIONER LESTER: Yea.  
4 COMMISSIONER WINSLOW: Yea.  
5 COMMISSIONER CONAWAY: Yea.  
6 COMMISSIONER CLARK: Yea.  
7 CHAIR McRAE: Opposed? Very fine.  
8 Let me just clarify, also, for purposes  
9 of going forward, am I including the Office of Energy in  
10 the voting process at this point, so that we can note it  
11 for the record. I know you have shared your comment on  
12 this. I don't know that that follows across the board.  
13 Are you voting in this?

14 MR. CHERRY: You are asking me?  
15 CHAIR McRAE: Yes, I am.  
16 MR. CHERRY: Procedurally, you are  
17 asking me.  
18 CHAIR McRAE: Yes, I am.  
19 MR. CHERRY: I view myself as a vote,  
20 like the five others. One could argue whether that was  
21 the intent of the legislation. I intend to cast one vote  
22 like everybody else.  
23 CHAIR McRAE: Very fine. I wanted  
24 everyone to be clear as to how you are fitting in.

0425

1 We are moving on to Issue 2. This is  
2 company/customer risk. We are starting with the Staff  
3 position here.  
4 COMMISSIONER CLARK: Any firm issues,  
5 Madam Chair. I'm wondering, as far as this is concerned,  
6 are there any actual firm issues here, or is it a general  
7 approach or philosophy as we go forward?  
8 CHAIR McRAE: As I see it, I see it as a  
9 general approach again. I will look to the key parties  
10 which are Staff and Delmarva, if they feel they have to  
11 have a critical up down versus conceptual, then I'll look  
12 to them to definitely raise it.

13 COMMISSIONER WINSLOW: Madam Chair, I

14 have to vote consistent with the first issue, given the  
15 fact that I bought onto the philosophy of the funnel  
16 system -- the funnel theory.  
17 CHAIR McRAE: So, you are moving to  
18 adopt Staff's position.  
19 COMMISSIONER WINSLOW: Yes, I am.  
20 CHAIR McRAE: Is there a second on that?  
21 COMMISSIONER CONAWAY: I will second  
22 that.  
23 CHAIR McRAE: All in favor.  
24 Yea.  
0426  
1 COMMISSIONER LESTER: Yea.  
2 COMMISSIONER WINSLOW: Yea.  
3 COMMISSIONER CONAWAY: Yea.  
4 COMMISSIONER CLARK: Yea.  
5 CHAIR McRAE: Opposed? Very fine.  
6 Item 3 is the RFP and IRP relationship.  
7 You're struggling.  
8 COMMISSIONER CLARK: I asked this  
9 question, I guess, rhetorical before. I am asking it  
10 again.  
11 Are we going to make some substantive  
12 decisions here today with regard to how we are going to  
13 deal with the IRP when it comes in from Delmarva, or are  
14 we not?  
15 CHAIR McRAE: I don't know that we're  
16 being called upon, and Delmarva and Staff can clarify  
17 that for me. I don't know that we are being called upon  
18 to address the content of the IRP today. Because the bid  
19 evaluation process and all of that is going to come into  
20 play. But if that is the case, please make that clear.  
21 MR. GEDDES: Point of clarification.  
22 No. The statute is pretty clear how they are supposed to  
23 integrate.  
24 The only open issue was how we would try  
0427  
1 to get the results of RFP into the IRP. And I think the  
2 parties agree on that. So, I don't think there is an  
3 issue that the Commission needs to resolve on this.  
4 MR. WILSON: That's correct.  
5 CHAIR McRAE: Very fine.  
6 MR. FIRESTONE: Madam Chairwoman, I  
7 would request a vote on the issue of whether price is a  
8 legitimate criterion or not, and that specifically deals  
9 with the relationship of the RFP to the IRP.  
10 CHAIR McRAE: And certainly, I have no  
11 problem with that. Why don't we do the RFP and IRP. And  
12 then following that, address the question as to whether  
13 price is a legitimate criterion. It is certainly  
14 mentioned in the consultant's report and discussed  
15 extensively.  
16 So, I had a motion from Commissioner  
17 Winslow on accepting the Staff's language on the RFP and  
18 IRP relationship.  
19 Did I get a second on that?  
20 COMMISSIONER WINSLOW: For the record, I

21 do so move.  
22 COMMISSIONER LESTER: Second.  
23 CHAIR McRAE: I thought you did. I  
24 guess I forget Commissioner Clark was looking so  
0428  
1 uncertain about this process, I just kind of stopped  
2 cold.  
3 CHAIR McRAE: I got a move and second.  
4 All in favor.  
5 Yea.  
6 COMMISSIONER LESTER: Yea.  
7 COMMISSIONER WINSLOW: Yea.  
8 COMMISSIONER CONAWAY: Yea.  
9 COMMISSIONER CLARK: Yea.  
10 CHAIR McRAE: Opposed? Very fine.  
11 And we were specifically asked about the  
12 question of price. I will definitely on my behalf, I had  
13 not put this in motion form, but I definitively do  
14 believe implicit in the language of the legislation and  
15 the circumstances surrounding the legislation that price  
16 is, indeed, a factor that should be considered in the  
17 process.  
18 And I certainly would move that forward  
19 for action.  
20 COMMISSIONER WINSLOW: Second.  
21 CHAIR McRAE: All in favor.  
22 Yea.  
23 COMMISSIONER LESTER: Yea.  
24 COMMISSIONER WINSLOW: Yea.  
0429  
1 COMMISSIONER CONAWAY: Yea.  
2 COMMISSIONER CLARK: Yea.  
3 CHAIR McRAE: Opposed? Very fine.  
4 Now we're onto the contract project size  
5 location. There are issues within this. I mean, we  
6 start from Staff's position. If someone wants a  
7 specific --  
8 MR. WILSON: Delmarva would like to have  
9 the question of whether firm energy or unit contingent  
10 purposes are being voted on.  
11 CHAIR McRAE: Commissioners.  
12 COMMISSIONER CLARK: Do you want the max  
13 size the minimum size, as well?  
14 MR. WILSON: Absolutely.  
15 COMMISSIONER WINSLOW: Madam Chair, I  
16 believe that some of the possible bidders, if a larger  
17 facility maybe more economically feasible for them, and  
18 it would be beneficial to at least look at those bids and  
19 not just set up preconditions that preclude or highly  
20 discourage bids that might be viable and might have  
21 favorable characteristics and may be economically viable,  
22 as well.  
23 So, actually, I am not necessarily in  
24 favor of the maximum size, suggested by the Staff, but I  
0430  
1 guess I would say that the balance between the two, I am  
2 in favor of the Staff's position.

3 CHAIR McRAE: Okay.  
4 COMMISSIONER CLARK: With regard to the  
5 maximum size --  
6 CHAIR McRAE: : This is a motion, and  
7 before we talk about it, I need a second here.  
8 COMMISSIONER CLARK: Unit contingent and  
9 400 megawatts.  
10 CHAIR McRAE: No. I thought that was  
11 only with respect to the maximum -- the Staff's position.  
12 You spoke on maximum, and then you said Staff's position.  
13 We were asked to speak to two things. I assumed you were  
14 speaking only to maximum size.  
15 COMMISSIONER WINSLOW: I did speak to  
16 that. But I would also -- well, let's leave it at that  
17 for right now.  
18 CHAIR McRAE: Take it separately.  
19 COMMISSIONER CLARK: Second.  
20 CHAIR McRAE: All in favor of going with  
21 the Staff's position which is a maximum size of 400  
22 megawatts indicate by saying yea.  
23 Yea.  
24 COMMISSIONER LESTER: Yea.  
0431  
1 COMMISSIONER WINSLOW: Yea.  
2 COMMISSIONER CONAWAY: Yea.  
3 COMMISSIONER CLARK: Yea.  
4 CHAIR McRAE: Opposed? Very fine.  
5 COMMISSIONER CLARK: Madam Chair, just  
6 for the record, too, I would like to lay, it's a concern.  
7 At least as I was weighing this, when you are talking  
8 about having a maximum contract size of 400 megawatts,  
9 there are risk when your long-term hedging like that for  
10 price, and there's a danger if we go with that, if we  
11 lock in too high price for SOS folks. That is something  
12 that is going to have to be looked at, and I am going to  
13 look at later on as part of my piece of the puzzle when  
14 reviewing this and when we are reviewing the bidding  
15 results.  
16 But going back to the fact that the IRP  
17 is a bigger picture, it would be nicer to have more  
18 pieces to try to fit into that puzzle at this stage. So,  
19 I guess, along with Commissioner Winslow, a big funnel.  
20 COMMISSIONER WINSLOW: Madam Chair, and  
21 I might add, I believe that this Commissioner, anyway,  
22 will be looking at a lot more carefully at the issues  
23 that impact upon the individual consumer when this comes  
24 back through the process and comes to us.  
0432  
1 In other words, right now, I think we  
2 have to be flexible in order to make sure that we have  
3 adequate number of people bidding in this area. But when  
4 it does come back to us, we do want to have a lot more  
5 assurance that there's going to some price stability, in  
6 fact, is going to be gained if we are going to get some  
7 favorable benefits from this new generation.  
8 CHAIR McRAE: Also, I must say, I wish I  
9 had accepted your original form of motion where you just

10 accepted Staff's position because by deciding max, we now  
11 have to address minimum, that there be no minimum with  
12 Staff's position.

13 COMMISSIONER CLARK: I move that there  
14 be no minimum contract.

15 CHAIR McRAE: Size. Contract size?

16 COMMISSIONER CLARK: Yes.

17 CHAIR McRAE: Is there a second?

18 COMMISSIONER CONAWAY: I will second  
19 that motion.

20 CHAIR McRAE: All in favor.  
21 Yea.

22 COMMISSIONER LESTER: Yea.

23 COMMISSIONER WINSLOW: Yea.

24 COMMISSIONER CONAWAY: Yea.

0433

1 COMMISSIONER CLARK: Yea.

2 CHAIR McRAE: Opposed? Okay.

3 Then we were asked about firm versus  
4 unit contingent as far as the contract requirements.

5 COMMISSIONER WINSLOW: Once again, I  
6 fall on the side of some flexibility. I don't believe  
7 that requiring firm versus unit right now is something.  
8 I think we should look at both and then make a decision  
9 as to what's in the best interest of the consumers of  
10 this state and the businesses of this state.

11 CHAIR McRAE: Okay.

12 COMMISSIONER WINSLOW: I would move that  
13 the Staff's position be approved by the Commission.

14 COMMISSIONER CLARK: Second.

15 CHAIR McRAE: All in favor.  
16 Yea.

17 COMMISSIONER LESTER: Yea.

18 COMMISSIONER WINSLOW: Yea.

19 COMMISSIONER CONAWAY: Yea.

20 COMMISSIONER CLARK: Yea.

21 CHAIR McRAE: Opposed? Very fine.

22 Now, delivery point. Is this something  
23 that requires the Commission action at this juncture,  
24 delivery point. This issue strikes me as something we

0434

1 can skip right past.

2 How about the standard form purchase  
3 power agreement?

4 MR. GEDDES: Not on behalf of Staff.

5 CHAIR McRAE: Next we have, is it the  
6 regulatory out clause.

7 COMMISSIONER WINSLOW: I think the  
8 record should reflect, Madam Chair, that those issues we  
9 are going over in that so fashion, we do so knowingly and  
10 intelligently with the mind that there's agreement to  
11 Staff's position.

12 CHAIR McRAE: Is that in the form of a  
13 motion?

14 COMMISSIONER CLARK: Point of order. I  
15 think it is more appropriate, the parties are here and  
16 available to speak up if they want any issue addressed,



17 by default so we done leave anything out. I think that  
18 is how we should approach it.

19 CHAIR McRAE: You mean, not act on it.  
20 Assumes Staff's position. And then, at the end, we say,  
21 anything that we haven't addressed is that kind of thing.

22 COMMISSIONER CLARK: That's right. For  
23 the record, as we are going through the sheet  
24 sequentially, any party is able to speak up and request

0435  
1 that there be a decision articulated on the record.

2 CHAIR McRAE: Okay. So, we are on to  
3 bidder threshold requirements.

4 MR. WILSON: Your Honor, would you go  
5 back to Issue 8, and I would request a vote on whether or  
6 not a regulatory out clause provision be permitted in the  
7 contract.

8 CHAIR McRAE: As I read this provision,  
9 and maybe it will be cleared up for me, my understanding  
10 is, it's not a yes or no at this juncture. But it is  
11 being looked at later in the process.

12 MR. WILSON: Your Honor, as part of the  
13 RFP process, we are being called upon to put together a  
14 standard power purchase agreement. And in writing that  
15 agreement, we have to know what provisions we can and  
16 cannot include.

17 CHAIR McRAE: That's not what I'm  
18 getting from...

19 MR. GEDDES: Madam Chair, Members of the  
20 Commission.

21 The Staff is opposed to regulatory out  
22 provision for the reasons that were stated in the  
23 materials and, I believe, articulated by other parties.

24 The problem with this is having the

0436  
1 purchaser be able to get out of the contract at some time  
2 in the future. The future not being specifically  
3 described, we believe has negative consequences on the  
4 financeability of the contract, as well as the people  
5 that would be interested in bidding on the contract. We  
6 think it is an impediment to attracting people to the  
7 market. And Staff is pretty persuaded that its position  
8 on this is consistent with the Commission's general  
9 policy. And that this should not be included in any  
10 document.

11 Clearly as a regulated entity, the  
12 company can come back at any time and ask the Commission  
13 for relief, for whatever circumstances. The legislation  
14 as we discussed earlier provides one mechanic. There may  
15 be others. And to put this up front in a contract like  
16 this, we think, in a bidding process, we think is going  
17 to have a negative or chilling effect on bidding, as  
18 well, as financeability. So we're opposed to it.

19 CHAIR McRAE: I do think, though, just  
20 to say we adopt Staff's report will be a little confusing  
21 because it does provide that up to the point where the  
22 four agencies have signed on the dotted line for a PPA  
23 there can be a regulatory out, as I am understanding the

24 language as you summarized it in this document.

0437

1 MR. GEDDES: That's correct. I believe  
2 Mr. Wilson was dealing with the long-term contract. And  
3 I think that is the company's position, that they want  
4 the ability to have a regulatory out at any time in the  
5 contract.

6 MR. WILSON: Your Honor, we are looking  
7 at it both ways.

8 If it works for the agencies up to a  
9 point, why not protect the customers. The only time such  
10 a provision would be used would be if there is a problem  
11 with getting recovery on a dollar-for-dollar basis.

12 Delmarva does not want to be in a  
13 position where we are obligated to make payments under a  
14 commercial contract. And the Commission is not obligated  
15 to take up the docket to move a request for an  
16 application forward. This creates that balance.

17 In a normal setting, there is give and  
18 take. Here, these things are being imposed. If the  
19 Commission is imposing these conditions on the company,  
20 then there has to be a responsibility that is accepted by  
21 the Commission to act in an expedited manner on any  
22 application that comes forward. This creates that  
23 balance.

24 Otherwise, the customer is going to have

0438

1 to bear the cost at all times. And there may be an  
2 interim period where the company, the marketer is looking  
3 to Delmarva to make them whole, when Delmarva has looked  
4 to the Commission and the Commission has not acted, or  
5 the Commission has decided to defer how the payment is  
6 structured. Well, the energy marketers are not subject  
7 to that.

8 So, in the interest of balance we are  
9 looking for this provision to be included.

10 CHAIR McRAE: I guess I must not be  
11 clear here.

12 As I am understanding this language, it  
13 is saying, after the power purchase agreement is  
14 approved. After it is approved, we are not getting into  
15 regulatory out. Prior to the signing, to me, it's --

16 MR. WILSON: Your Honor, prior to the  
17 signing there is no contract, so it has no bearing. It  
18 only matters after Delmarva signs a contract.

19 CHAIR McRAE: Do you see what language  
20 --

21 MR. WILSON: I understand.

22 CHAIR McRAE: Staff's language.

23 MR. WILSON: Staff's language. It has  
24 no commercial meaning, unless there is a contract that

0439

1 obligates Delmarva to a marketer, there is no exercise of  
2 any provision.

3 CHAIR McRAE: So, we want some  
4 modifications of Staff's language. And so, the question  
5 is, can there be a regulatory out after approval of the

6 agreement. And that, in my view, certainly will have  
7 implications for bidders, if that's permissible.  
8 But it does appear to me, to the extent  
9 this is imposed by the Commission, that the Commission,  
10 too, is on the hook, if you will, and the other agencies  
11 that sign on in terms of the responsibility component for  
12 this agreement.  
13 Now, that's my interpretation of saying,  
14 no regulatory out, means that we have to be responsible  
15 for the document, along with Delmarva.  
16 COMMISSIONER WINSLOW: Madam Chair, I  
17 support this proposal of Staff, I guess, based partly  
18 upon what you had to say, which is, there are other  
19 agencies that have a say in this. If we were to take  
20 Delmarva's position, I think we effectively eliminate  
21 their input on this particular issue.  
22 CHAIR McRAE: I think that is a correct  
23 reading.  
24 Is that a motion there?  
0440  
1 COMMISSIONER WINSLOW: That's a motion.  
2 CHAIR McRAE: Is there a second?  
3 COMMISSIONER CONAWAY: Second.  
4 CHAIR McRAE: All in favor.  
5 Yea.  
6 COMMISSIONER LESTER: Yea.  
7 COMMISSIONER WINSLOW: Yea.  
8 COMMISSIONER CONAWAY: Yea.  
9 COMMISSIONER CLARK: Yea.  
10 CHAIR McRAE: Opposed? Very fine.  
11 Bidder threshold requirements.  
12 MR. WILSON: We would like a vote on the  
13 question of whether investment grade only parties may  
14 participate, or if the Commission is going to sanction  
15 noninvestment grade bidders.  
16 COMMISSIONER CLARK: I was persuaded by  
17 the consultant's submission regarding the propensity of  
18 noninvestment grade firms to seek to build generation.  
19 We would be cutting our available market for bidders down  
20 to bone if we did that.  
21 So, for that reason, I don't agree.  
22 COMMISSIONER WINSLOW: Madam Chair. I  
23 would also add that I believe that the security  
24 considerations are enhanced with respect to those  
0441  
1 particular firms to give us some assurance that we have  
2 adequate protection in the event of problems. That,  
3 also, made me feel a little bit more at ease with respect  
4 to this position.  
5 CHAIR McRAE: Now, I've had your  
6 comment, if I could have it in the form of a motion.  
7 COMMISSIONER CLARK: Madam Chair, I move  
8 that the Commission accept Staff's recommendation  
9 regarding the investment grade only bidder threshold  
10 requirement.  
11 COMMISSIONER WINSLOW: Second.  
12 CHAIR McRAE: All in favor.

13 Yea.  
14 COMMISSIONER WINSLOW: Yea.  
15 COMMISSIONER CONAWAY: Yea.  
16 COMMISSIONER CLARK: Yea.  
17 CHAIR McRAE: Opposed?  
18 COMMISSIONER LESTER: Opposed.  
19 CHAIR McRAE: Opposed, Commissioner  
20 Lester.  
21 Now, the additional point you made,  
22 Commissioner Winslow.  
23 COMMISSIONER WINSLOW: It might be  
24 applicable someplace else, but I was not making that as a  
0442  
1 motion.  
2 COMMISSIONER CLARK: Was the filing fee  
3 issue resolved between the parties?  
4 I agree with having a \$10,000 filing  
5 fee. But then, also, for smaller bidders coming in  
6 having a scale down. The problem was, that was not  
7 really --  
8 CHAIR McRAE: Fleshed out.  
9 COMMISSIONER CLARK: I am not  
10 comfortable with what that recommendation was  
11 regarding --  
12 MR. GEDDES: That was the  
13 recommendation, was not to just of a flat fee, but to  
14 scale it based on size. That is what in the Staff's  
15 report.  
16 The company did not raise that issue. I  
17 don't know whether they have a problem with Staff's  
18 position on that now or not. And they want the  
19 Commission's vote on it.  
20 MR. WILSON: We did not raise the issue.  
21 MR. TOLMAN: Point of information, Madam  
22 Chair. Where are we now? I'm a little lost.  
23 CHAIR McRAE: We are on Page 10 bidder  
24 threshold requirements.  
0443  
1 MR. TOLMAN: Good. I would like to ask  
2 the Commission for a vote on the proposal that it be a  
3 threshold requirement that any new electrical generation  
4 using a fossil fuel employ carbon capture and  
5 sequestration as part of the bid.  
6 I believe NRG Energy suggested the same  
7 thing.  
8 CHAIR McRAE: Let me just hold you there  
9 because we hadn't voted on the \$10,000 filing fee. As a  
10 matter of fact, it has not been put in the motion form.  
11 We were in the middle of deciding another issue here.  
12 MR. GEDDES: Point of clarification,  
13 Madam Chair, if I might.  
14 I believe Mr. Wilson has said, it is not  
15 an issue that the company wants to continue to push.  
16 CHAIR McRAE: Oh, the \$10,000 filing  
17 fee. I'm sorry.  
18 MR. WILSON: We filed our comments. We  
19 made our arguments throughout the day. You asked us if

20 there were particular things we wanted to have voted on.  
21 That was not one of the items.

22 CHAIR McRAE: We will assume that  
23 Staff's position holds where you have not raised an  
24 issue.

0444

1 Now, this is a new issue, at least for  
2 purposes of the Commission.

3 Would you restate that, Mr. Tolman.

4 MR. TOLMAN: Yes. What I would like the  
5 Commission to vote on is the proposal that it will be a  
6 threshold requirement that any new electrical generation  
7 using a fossil fuel employ carbon capture and  
8 sequestration as part of it's bid.

9 COMMISSIONER WINSLOW: Madam Chair, I  
10 think I've addressed this before.

11 I personally feel that that is probably  
12 the best and most prudent thing to request, especially  
13 for people who want to remain healthy in the future.

14 I am concerned because the legislation,  
15 I don't believe, mandates that we do that. So, how can  
16 we mandate that here today?

17 I believe that your rationale and the  
18 reasons for your recommendations are very, very good.  
19 They are excellent. But I'm duty bound to follow what I  
20 perceive to be the law. I don't think the law precludes  
21 other competition.

22 So I am not going to make the motion,  
23 although I respect very much the reasons behind the  
24 request.

0445

1 CHAIR McRAE: Commissioners Clark.

2 COMMISSIONER CLARK: What the request is  
3 that this be a threshold requirement that would preclude  
4 the bid from being considered at all, for the same type  
5 of rationale that I think we applied in other situations.  
6 I don't think we should make it a threshold requirement.  
7 It is something that should be considered under the  
8 nonrate factors later on.

9 COMMISSIONER LESTER: I have a question.  
10 Mr. Cherry, does DNREC require  
11 recapturing?

12 MR. CHERRY: No, sir.

13 COMMISSIONER LESTER: Are there no laws  
14 on the books.

15 MR. CHERRY: It doesn't require carbon  
16 sequestration as a component of compliance. I think the  
17 short answer to your question is, no.

18 I would, for the record, Mr. Tolman, I  
19 would have to reluctantly, I guess, agree with portions  
20 of what Commissioner Winslow has to say on this issue.

21 I wish that the legislation had gone so  
22 far as to say what your proposing we vote on here today  
23 that there be carbon sequestration and capture, but it  
24 doesn't. It is silent on carbon, in total, I believe.

0446

1 And I don't see that we can hold that standard to all of

2 the bidders. For one thing, it wouldn't work in the wind  
3 instance.

4 MR. TOLMAN: I said if they were using  
5 fossil fuels it involves that. That clearly does not  
6 apply to wind power.

7 MR. CHERRY: As much as I hate to say  
8 this, I don't think we can hold our bidders to that  
9 requirement. I would be voting against that, if it were  
10 to come to a motion.

11 CHAIR McRAE: I don't know that it is  
12 going to come to a motion because one has not come  
13 forward. And I would have to say in the spirit of my  
14 earlier comment, that my objective, as one Commissioner,  
15 is to see a process, a broad base process that can be  
16 refined through the review process. So, to the extent  
17 there are measures that limit it, I mean, I'm not as  
18 inclined. In this case, I have not heard a motion that  
19 is supportive of proactive elimination with respect to  
20 the fossil fuel.

21 MR. TOLMAN: Madam Chairman, with all  
22 due respect, I am afraid you don't understand the  
23 consequences of not keeping carbon dioxide out of the  
24 atmosphere.

0447

1 CHAIR McRAE: Well, let me do say, I  
2 think I am in good company with a number of people who  
3 have some level of involvement in that issue. I have  
4 participated very actively with RGGI and do collaborate  
5 with DNREC from time to time.

6 I would certainly be willing to concede  
7 your depth of knowledge maybe greater than mine. But I  
8 am focused right here on the objectives that we were  
9 assigned by the legislature. And it really does not  
10 speak to the point that you put forward.

11 MR. CHERRY: The consequences, if  
12 carried to the extreme, are extreme. But I don't know  
13 that a 400 megawatt power plant in Delaware as a result  
14 of this process, that has yet to go through the IRP  
15 analysis and eventual building, is going to change that  
16 one way or the other. We need to start someplace.

17 But in the absence of any clear  
18 direction in the legislation to that effect, I don't know  
19 that this is the place to start that.

20 MR. TOLMAN: You are quite right. This  
21 is really a global issue that a lot of people have to  
22 become involved in.

23 MR. WILSON: Your Honor, on No. 9, the  
24 company would seek a vote on the question of variable

0448

1 interest entities and prefer not to have them included.

2 CHAIR McRAE: Excuse me. Before we go  
3 onto the next bid item, I believe Mr. Muller had his hand  
4 up with respect to a point.

5 Mr. Muller.

6 MR. MULLER: With regard to Mr. Tolman's  
7 request, I just like to point out that the Commission  
8 held a well attended public workshop and sought input

9 from the public. And a large number of the comments from  
10 the public were directed to precisely the point that  
11 Mr. Tolman is asking you to make a decision on.  
12 Subsequently, a large number of comments were received,  
13 not only by Kempton and Firestone, but by us, and  
14 Mr. Tolman and other organizations asking the Commission  
15 to be cognizant of just this issue.

16 And now, if the reality is that no  
17 member of the Commission is even willing to make a motion  
18 relating to that, it may raise some questions in some  
19 peoples minds, mine, to be specific, as to how serious  
20 the Commission is about listening to the public on these  
21 issues. And how serious the Commission and DNREC are  
22 about pushing the envelope beyond the traditional bound I  
23 of the utility regulation, which have ignored  
24 environmental issues.

0449

1 So, I think that you will be making a  
2 mistake if you simply decline to act on this and blow it  
3 off. Thank you.

4 CHAIR McRAE: Let me just offer this  
5 comment that very often the Commission hears arguments  
6 that certainly have merit, but yet, we are driven by  
7 whatever legislative directives we are called upon to  
8 respond to.

9 I do have your comments. As you are  
10 aware, I was on the phone call where you did your all day  
11 session. So, I am not unmindful of the issues. I think  
12 they are well represented in this document, but that does  
13 not mean that I now must negate whatever mandates have  
14 put been put forward. And I think we have been very  
15 clear, as a Commission, just earlier today in discussing  
16 the fact that we wanted to have as broad a focus as  
17 possible and refine it through the evaluation process.  
18 And I also indicated previously that the evaluation  
19 process does have considerations of environmental issues,  
20 more than the 14 points, because it does appear in other  
21 areas.

22 So, while I think it's inaccurate to say  
23 it has been ignored, I don't intend to continuously  
24 address that issue in terms of where the Commission is.

0450

1 I think we have all spoken on it extensively today. And  
2 I, frankly, can't think of anything more I can add at  
3 this juncture.

4 MR. CHERRY: To your point, Mr. Muller,  
5 also, I, too, was at the workshop. Tremendous amount of  
6 discussion on carbon, CO2, greenhouse gasses, climate  
7 change. It was a great dialogue.

8 We have before us, though, a  
9 consultant's report that does talk to carbon. It does  
10 talk to greenhouse gasses. We can debate whether or not  
11 it goes far enough. But by not making a motion on  
12 Mr. Tolman's suggestion doesn't mean we are not sensitive  
13 to the carbon issue.

14 CHAIR McRAE: Now, Mr. Wilson, I believe  
15 you were about to raise another matter.

16 MR. WILSON: Yes. The company prefers  
17 not to have to carry on its books variable interest  
18 entities. So, we want that to be threshold issue, and we  
19 would ask the Commission to vote on the record.

20 CHAIR McRAE: Mr. Geddes.

21 MR. GEDDES: Madam Chair, Members of the  
22 Commission.

23 Given the Commission's prior action with  
24 regard to the Staff's report, which has been accepted, I

0451 1 don't really understand Mr. Wilson's motion.  
2

3 In essence, Staff is not taking a  
4 position on whether it should or should not be.

5 We understand Delmarva's concern, and if  
6 Delmarva feels that a company may put it in that  
7 position, we are seeking additional information so it can  
8 be clarified.

9 We understand the concern. We are not  
10 necessarily interested in having Delmarva be subject to  
11 that accounting rule. But our position is a little more  
12 a fluid than what Mr. Wilson would suggest that it be a  
13 threshold issue. We are not saying it should be a  
14 threshold issue. We are, in essence, saying if the  
15 company has a problem with the bid because of this issue,  
16 make sure that they provide us enough information.

17 And, I think, we could work this out in  
18 the order that will be considered by the Commission on  
19 the 31st. That would be my hope on this language.

20 MR. WILSON: Your Honor, for Delmarva,  
21 it is a threshold issue. It simply boils down to an  
22 accounting issue that we are not going to have a lot of  
23 flexibility on. We will be told at a later date by our  
24 auditors how these contract can be classified. It is an  
up or down matter.

0452 1 CHAIR McRAE: I believe it was in your  
2 document -- yours or the consultants, I can't recall,  
3 where that issue was looked at by a number of states.  
4 And they were kind of in various places around the  
5 treatment of it.

6 And my sense from what I read, it is not  
7 a clear-cut yes or no that it is applicable, and that was  
8 supposed to be followed on with some documentation.

9 Am I missing --

10 MR. WILSON: It is not a clear-cut yes  
11 or no by the states. But from an auditor prospective, it  
12 is a clear-cut yes or no. If your auditors tell you, you  
13 must classify this contract X, Y, Z way, there is not a  
14 lot of room, especially under Sarbanes-Oxley.

15 CHAIR McRAE: I guess my question is,  
16 have you been told that and where is the documentation.  
17 Because what is being raised here is the issue is not  
18 necessarily in dispute from a Staff standpoint, as much  
19 as it is documenting that it is an issue and to what  
20 extent.

21 And as I recall, even among states where  
22 they recognized it, some mostly treated it in rate cases



23 versus in this in RFP process, per se. It seems to me  
24 there are loss end issues there that need to be nailed

0453

1 down. And I don't see this decision negating a follow  
2 onto that.

3 MR. WILSON: Your Honor, we view it, as  
4 I said, a threshold issue. It is not a question of  
5 providing additional information. It is a question of,  
6 it's an unacceptable consequence.

7 So, if we are going to have an RFP that  
8 reflects accurately what the company, or what the  
9 Commission is asking us to do, we want to give the proper  
10 signal. And the proper signal would be, if FASBY rules  
11 say you have to be classified as a VIE, that is a  
12 disqualifying factor from our standpoint.

13 We are trying to put that message out  
14 there because Delmarva has a net worth of \$650 million  
15 dollars. You are asking to us enter into contracts that  
16 may far exceed that value, and we simple can't carry  
17 someone us else on our books and records because a remote  
18 subsidiary --

19 CHAIR McRAE: Yes. My understanding,  
20 and maybe I am still missing something, you can't carry  
21 them, but you need an offset, if it is determined that  
22 FASBY applies, you need an offset on the equity side.

23 MR. WILSON: That would be one approach  
24 if we were to try to carry them. We would not want to

0454

1 bring them onto our financial statement.

2 CHAIR McRAE: I'm going to have to ask  
3 Staff to help me out. I must have misread this. At that  
4 time I did not appreciate that it was a threshold issue.  
5 And, apparently, it has risen to this level. Please give  
6 me some insight on how I missed that term.

7 MR. GEDDES: It is an important issue.  
8 And one could categorize it as a threshold issue.  
9 Perhaps, where we disagree is in the implementation, or  
10 the process that the unilateral decision by the company  
11 to disqualify a bidder based on this, quote, criterion.  
12 We want to make sure that we understand the basis of  
13 that.

14 And so, I think it is a drafting issue  
15 and not a specific issue for the Commission.

16 And I would suggest to Mr. Wilson, let's  
17 try to work on the language that the company is  
18 comfortable with. I don't think we necessarily disagree.  
19 We want to make sure that there is a process in place and  
20 that bidders are just not discarded or disqualified for  
21 this condition. And that if he's not comfortable with  
22 the drafting that takes place in the next two weeks, we  
23 can revisit this on October 31st.

24 CHAIR McRAE: Is that satisfactory to

0455

1 you, Mr. Wilson?

2 MR. WILSON: Your Honor, we are in  
3 constant communication with the Staff trying to work  
4 through these issues.

5 But there are some issues that we just  
6 don't have real flexibility on.

7 CHAIR McRAE: So, is your point at this  
8 juncture that if a bid triggers a VIE treatment that it  
9 immediately is -- it's automatically eliminated.

10 MR. WILSON: That would be our position.

11 COMMISSIONER WINSLOW: Madam Chair, I  
12 don't know if I see where the difference is between the  
13 parties. I seem to hear over here that they want  
14 additional time to determine what a VIE might look like,  
15 so to speak.

16 But you also agree, if it, in fact, it  
17 quacks like a VIE, walks like a VIE, if it is a VIE, you  
18 agree it should be a threshold issue and they should be  
19 considered.

20 So, is there a general accounting  
21 principal that is you can point to and work around in  
22 terms of language? Is that what you are referring to.

23 MR. GEDDES: There is an accounting  
24 standard. And with all due respect to the accountants in  
0456 the house, it is a little difficult to understand.

2 And what we want to make sure is that we  
3 draft an order that says, if there is an initial  
4 determination that somebody is of this category, that  
5 that that is not the end of the process. But that there  
6 is an opportunity to make sure that there is not some  
7 other way to qualify the bidder and not just reject them  
8 on that point.

9 And so, I think it is a matter of detail  
10 versus substance. We agree that it's a problem, if, in  
11 fact, this potential bidder is engrafted on the company's  
12 balance sheet without some consideration offset.

13 But we are not prepared today, and our  
14 position, which the Commission has -- we discussed with  
15 the Commission -- is that the issue needs to be looked  
16 into to make sure that there is not some other way to  
17 qualify the bidder.

18 And that is what we are arguing about or  
19 discussing is the process.

20 The company wants to have that as the  
21 initial threshold vote up or down. And with a regulation  
22 that is unclear, at best, I think it should reflect more  
23 opportunity to make sure that that initial valuation is  
24 correct, given the fact that the thin 46 is not clear on  
0457 its face as to what qualifies and what does not.

2 CHAIR McRAE: Well, there is another  
3 question for me around timing.

4 When you say looked into, are we talking  
5 about when we receive a bid that triggers this potential  
6 thin 46 issue or VIE at that juncture. I mean, it could  
7 be that it becomes a nonissue because there is no bid  
8 that falls in that category. Although that's unlikely.

9 When exactly are we talking about  
10 ironing out the issue?

11 MR. GEDDES: As quickly as we can. I

12 can't give you a precise -- this will take five days or  
13 ten days. But we want to try to develop a process,  
14 whereby, there is some further analysis of this  
15 qualification. And I don't think ultimately we disagree  
16 where the end result maybe. It's a question of how we  
17 get there.

18 COMMISSIONER CLARK: Just so I  
19 understand Staff's position.

20 Essentially, you agree that any entity  
21 bidding or entering of PPA that would trigger VIE  
22 treatment that the company in the end wouldn't be  
23 required to sign that contract. You just don't want it  
24 to be a threshold requirement as far as the RFP is

0458

1 concerned.

2 MR. GEDDES: The only caveat, and I  
3 would agree with 90 percent of that statement is, unless  
4 it could be treated in some other way.

5 COMMISSIONER CLARK: In the end, at the  
6 end of the day, if it's going to trigger VIE treatment  
7 for the company, you agree that would not be appropriate  
8 for them to sign a PPA.

9 MR. GEDDES: And there is no other way  
10 to mitigate it. And there is a financial consequence to  
11 the company as a result of that, that cannot be  
12 mitigated. Yes.

13 COMMISSIONER CLARK: What type of  
14 increased uncertainty would that cause as far as bidders  
15 are concerned? You are saying you are not comfortable  
16 now setting it as a criteria?

17 MR. GEDDES: Correct. Still with the  
18 funnel. Yes, there may be some qualifications that need  
19 to be further clarified in order to get the bidder down  
20 the end of the funnel. But in the beginning, it is  
21 Staff's position it should not be a threshold  
22 disqualification. It should be flagged, and it needs to  
23 go over here for further analysis before it can come back  
24 into the main pile of bidders. But it should not

0459

1 automatically be rejected.

2 CHAIR McRAE: May I suggest we defer the  
3 decision here. I'm not saying it won't be made, but  
4 versus today. Only to the extent that I heard Delmarva  
5 loud and clear. I think Staff needs an opportunity to  
6 look at that issue. It did not sound like there was a  
7 lot of flexibility on the Delmarva side. But I still  
8 think we should explore what is out there, and then make  
9 an informed decision on the issue. That is not to say it  
10 will be put to bed. It's just that we need to,  
11 obviously, be better informed.

12 Are there other items that we need to  
13 decide with respect to threshold requirements.

14 All right. Moving onto security. We  
15 have Staff's position there. Are there items in security  
16 that we need to address?

17 MR. WILSON: Your Honor, again, the  
18 Delmarva position would be that a parent guarantee is

19 unacceptable and that the reduced security and transfer  
20 of risks to customers is unacceptable.

21 And we would seek that the Commission  
22 vote on the adequacy of the security as proposed by  
23 Staff.

24 CHAIR McRAE: Any thoughts or comments,  
0460 Commissioners.

1 MR. GEDDES: Point of clarification. I  
2 believe Mr. Sheingold believes it is no longer an issue.  
3 I would ask him whether he could address the Commission.

4 MR. SHEINGOLD: I thought the issue was  
5 for development period security, whether our position was  
6 the same as Delmarva's as whether it had to be provided  
7 in the form of letter of credit, \$100 a kilowatt, or  
8 whether if the entity was investment grade it could be  
9 provided by a parent guarantee.

10 We clarified in the final report that it  
11 would be a letter of credit for everybody. So, I don't  
12 believe there is any issue there, at least between us and  
13 Delmarva.

14 MR. WILSON: Is that to say that the  
15 security provisions as proposed by Delmarva in its  
16 original filing are being adopted here.

17 CHAIR McRAE: It was not just  
18 developmental. There is also the operational.

19 MR. SHEINGOLD: But the difference is,  
20 as I understand it, for the operational period security  
21 are -- we had proposed \$200 a kilowatt cap and that for  
22 noninvestment grade parties they would have to provide  
23 the entire amount in the form of a letter of credit.

24  
0461 In addition to that, we proposed that  
1 with regard to the subordinated lien, that a developer  
2 would be able to have the senior occurred lien in the  
3 maximum amount of 70 percent of the assets. That was  
4 actually strengthening that provision.

5 And so, I think that is the difference,  
6 as I understand it.

7 MR. WILSON: Your Honor, we are not sure  
8 what that means. We know what we proposed. That's what  
9 we would stand by. And we would ask the Commission to  
10 take a straight vote on whether or not you are adopting  
11 the security and credit arrangement as proffered by  
12 Delmarva or modified agreements as proffered by the IC's  
13 report.

14 MR. GEDDES: Point of clarification. I  
15 think if Mr. Wilson is not clear what Staff's position  
16 is, then it is probably not fair to ask the Commission to  
17 vote on it.

18 My suggestion would be, and I am sorry  
19 we had two of these issues that have come up here would  
20 be, let Staff draft and let Mr. Wilson suggest whether  
21 that is consistent with his understanding of our position  
22 and propose alternative language and bring that to the  
23 Commission. I think it would be more helpful than to try  
24

0462

1 to discuss in generalities things that counsel doesn't  
2 understand. It's not because, obviously, we have not  
3 made ourselves clear. It is a complicated issue. But, I  
4 think, if we see it on paper, it would be easier for  
5 Mr. Wilson to say, I either agree with this, or I propose  
6 alternative language that I would like the Commission to  
7 consider.

8 CHAIR McRAE: Is this something that  
9 would be decided on the 31st?

10 MR. GEDDES: That's correct.

11 CHAIR McRAE: I think we do have to  
12 provide guidance.

13 And I have to say I heard you say, you  
14 think you're in agreement. But as you discuss your  
15 points, there clearly is an issue as to whether you are  
16 or not. So, I guess, it would also be helpful to the  
17 Commission to be very clear as to what the differences  
18 are that block the parties at this point.

19 MR. WILSON: Your Honor, in our  
20 comments, Delmarva was quite clear in that the IC's  
21 report lessens the credit protections that were place for  
22 customers and puts the customers at risk. That is  
23 something that we are opposed to.

24 If they were adopting what was proposed

0463  
1 by Delmarva, there would be no need for discussion or for  
2 the red line report. So, clearly, there's a major  
3 difference between the two proposals. And it is a very  
4 straightforward issue. Are you willing to accept what  
5 Delmarva has proffered, or are you willing to accept  
6 what --

7 CHAIR McRAE: Well, it is not as  
8 straightforward as you suggest if you take into  
9 consideration the overarching prospective that the  
10 Commissioners related at the outset, which is that we  
11 have made an effort to expand the process and open the  
12 bidding window as much as possible so that we do get  
13 candidates in the door.

14 And to the extent there are barriers,  
15 instant, barriers, we are looking for ways to satisfy the  
16 parties and get around them so we have an opportunity to  
17 consider all possibilities.

18 At the end of the day, it maybe that  
19 that can't be. It maybe that there is absolutely nothing  
20 that can address some of these issues that we have come  
21 forward with. But the on objective is to give an  
22 opportunity to see if there is an alternative that the  
23 parties can agree on. And at the same time, allow us to  
24 have the flexibility of having as broad as bid pool as

0464  
1 possible, understanding that your concern does not  
2 disappear.

3 MR. WILSON: I guess our standpoint is,  
4 we are at the end of the day, and that this issue is  
5 right for consideration. And we are just trying to get  
6 clarity because we have got to go back and draft an RFP  
7 and contracts.

8                   Coming here on the 31st will not give us  
9 adequate time to consider that. So, we got to have a  
10 mechanism. We got to know what it is this Commission  
11 expects of the company. We just need some clarity. This  
12 is such a critical issue. We don't view it as a barrier.  
13 We view it as customer protection.

14                   COMMISSIONER CLARK: I agree with the  
15 Chairman here. This is a very important issue. It is a  
16 very important issue to you, the company and customers.  
17 But I want to get it right. I asked the question about  
18 two hours ago, three hours ago, for an articulation of  
19 what the difference was and the positions, and I am still  
20 not clear on it.

21                   I'm going to err on the side today of  
22 going ahead and asking that it be fleshed out vigorously  
23 between the parties and have the positions laid out so I  
24 can understand it and vote on it on the 31st. That's how

0465

1 I feel.

2                   CHAIR McRAE: Do any other Commissioners  
3 have comment in this regard? And then, I will  
4 acknowledge Mr. Long afterwards.

5                   COMMISSIONER LESTER: I would also like  
6 to agree with Commissioner Clark. I think we ought to  
7 come back on the 31st with some sort of idea of what we  
8 are doing on this. I just sat here and read through the  
9 security agreement proposal from Delmarva. It talks  
10 about two different things here. \$50 on contract  
11 capacity, 15 days later, \$100 kilowatt. But then it goes  
12 onto other things, also.

13                   So I think we really need clarification  
14 on this issue.

15                   COMMISSIONER CLARK: And from Staff, as  
16 well. I'm a little clearer on what Delmarva wants than I  
17 am on what Staff is suggesting. I just want to make  
18 sure.

19                   MR. GEDDES: On behalf of Staff, we will  
20 commit to get that language to Mr. Wilson and his client  
21 by Monday so he can look at it and know how he has to  
22 draft his RFP, whether consistent with the language we  
23 are proposing or his alternative language, and he will  
24 have to propose alternative language to the Commission,

0466

1 and the Commission will vote.

2                   CHAIR McRAE: Well, I certainly  
3 appreciate that. I am certainly sensitive to the needs  
4 of Delmarva in this regard.

5                   Mr. Long.

6                   MR. LONG: Madam Chair. If possible, I  
7 would like to be included or have NRG included in this  
8 discussion. The \$200 per kilowatt as suggested by Staff  
9 would add up to a letter of credit adding up to \$171  
10 million on our proposed facility.

11                   CHAIR McRAE: Excuse me. \$171 million,  
12 did you say?

13                   MR. LONG: Yes. That is correct. It's  
14 a number that we have not seen anything close to anywhere

15 else where we have been pursuing similar projects. This  
16 is one of these due or die issues for us. Letter of  
17 credit for \$171 million dollars would probably preclude  
18 us from bidding on this contract.

19 CHAIR McRAE: Yes.

20 MR. MANDELSTAM: Madam Chair. Bluewater  
21 would like to be involved in this discussion. It,  
22 obviously, has great impact on us, as well.

23 CHAIR McRAE: Let me suggest this.

24 Perhaps, before you leave, you might

0467

1 want to agree to set up a meeting date or a conference  
2 call. Apparently, there are a number of parties that are  
3 going to be affected by whatever comes out of this  
4 discussion. It is going to run counter to the pool that  
5 we were seeking to embrace. So, I would suggest that you  
6 not hesitate in setting something up. I will put that in  
7 the hands of Staff Counsel.

8 It makes a difference when you hear  
9 those numbers, I have to say. In the abstract, it's one  
10 thing. And it would be helpful if, when you resolve this  
11 discussion, that you could quantify for the Commission  
12 what sort of things we are talking about in dollars.

13 COMMISSIONER CLARK: And also, what we  
14 talked about in dollars to obtain the credit letter of  
15 credit also. We are talking about what the guarantee  
16 amount is. But I know there are an awful lot of  
17 variables. Just some thoughts.

18 COMMISSIONER WINSLOW: Madam Chair.

19 When I thought about Delmarva's  
20 position, it sounded perfectly reasonable to me that we  
21 don't want the consumers to share, or to go from having  
22 100 percent coverage, so to speak, to having less than  
23 100 percent coverage.

24 On the other hand, I am supporting

0468

1 competition and a little bit bigger marketplace. And I  
2 want people to be able to bid. So, although 100 percent  
3 might be the optimum, I am not sure, maybe we can get by  
4 and everybody is going to be as safe with 80 percent. I  
5 don't know the answer to that question. So, that is why  
6 I would welcome not just two versions, if that what it  
7 ends to be, but if there is a third version, my ears and  
8 mind are open.

9 CHAIR McRAE: I would want to say that  
10 I'm not at all unmindful of the sensitivity of these  
11 issues from the standpoint of Delmarva as the SOS  
12 provider. And so, the fact that this decision is being  
13 put in abeyance speaks to the fact of the seriousness of  
14 the kind of consideration that it requires. I don't want  
15 to go short trip either way.

16 But, indeed, I fully read your documents  
17 and I understand very much. I am sure this is true of  
18 all of the Commissioners that this does represent some  
19 very serious risk issues from Delmarva's standpoint. I  
20 am minimizing that at all.

21 Moving on. I think the term sheet is

22 next. Is there a decision here? If not, I will turn the  
23 page quickly.

24 MR. WILSON: Your Honor, are we to  
0469

1 understand that you've, basically, adopted all of Staff's  
2 position and all we can do is oppose?

3 CHAIR McRAE: No. What I said was,  
4 when, as we went to these issues, unless there was some  
5 request that we look at an alternative -- and I said at  
6 the outset we will work from the report that reflected  
7 Staff's position, as I think is additionally done when  
8 you have a hearing examiner participating. And if you  
9 are arguing against that and you want a specific vote  
10 from the Commission on any of these issues, as you just  
11 asked, in fact, then certainly, this is the time.

12 If you say you want not just to accept  
13 Staff's position, you have some reason that you feel we  
14 ought to address Delmarva's issue and decide on it, then,  
15 yes, each of these.

16 MR. WILSON: Then Delmarva would request  
17 a standing vote on each issue.

18 So, the question of the term sheet,  
19 which term sheet we use, I think our comments have set  
20 out our position. And Staff's comments and the IC's  
21 comments set out their position.

22 CHAIR McRAE: If we talk about the term  
23 sheet, as I understand it, your term sheet is completely  
24 nonnegotiable. But are there certain essential terms --  
0470

1 MR. WILSON: Your Honor, we view it as  
2 there are certain essential provisions, and we view this  
3 as the negotiating period.

4 Normally, in a contracting process,  
5 Delmarva would have the opportunity to directly  
6 negotiate. What we don't want to do have to negotiate  
7 today, have certain issues taken off the table, and then  
8 face having to negotiate again with a marketer already  
9 having made substantial compromises along the way.  
10 That's not negotiation.

11 So, we think that this process that has  
12 been set up, this is a negotiation. If Delmarva has to  
13 live with it, then the marketers should have to live with  
14 it, at least with respect to the essential or the  
15 threshold term. There are some terms that are going to  
16 fluctuate based on who the bidder is because not every  
17 principal will apply. But the major terms and conditions  
18 should apply.

19 We have gone through a very exhaustive  
20 process. And we don't want to be put into a position of  
21 having to renegotiate when there are items, as I said,  
22 that have been taken off the table and all we can do is  
23 stand to lose more.

24 CHAIR McRAE: Is Staff's position  
0471

1 inconsistent with that? My understanding of what Staff  
2 said is, All right, to the extent there are nonnegotiable  
3 items, they are spelled out up front, and there is room



4 for negotiations on items that are not as firm. And  
5 you're saying, everything is fair.

6 MR. WILSON: The list of items that are  
7 considered firm, very substantial.

8 CHAIR McRAE: Between your view and --

9 MR. WILSON: Between the two positions.

10 MR. GEDDES: I mean, Option A is, you,  
11 in essence, say, Here are the terms, take it or leave it.  
12 These are terms. You can bid on them versus including in  
13 your terms some conditions that are negotiable. And we  
14 think you will get a better response if you include both  
15 and not just put out an RFP that says take it or leave  
16 it. Please mail in your bids.

17 And I don't see what the prejudice is to  
18 the company by trying to include some terms that a  
19 bidder, in a normal give and take, could believe that  
20 they had been successful with. I mean, it is a little  
21 bit of a three-cornered hat. I understand that. But we  
22 are trying to make it a little less formalistic in  
23 suggesting that we think a better way to proceed is to  
24 include negotiable items. I don't understand what the  
0472

1 risk is to the company to try and exceed the Staff's  
2 request on this.

3 CHAIR McRAE: Commissioner Clark.

4 COMMISSIONER CLARK: I mean, just to be  
5 clear.

6 Does Delmarva have notice of what it is  
7 your position of what the negotiable terms should be?  
8 They got to get the RFP together quickly.

9 MR. GEDDES: To the extent they don't,  
10 clearly we will work with them. But I think they have a  
11 pretty good idea.

12 COMMISSIONER CLARK: Is that accurate?

13 MR. WILSON: Yes. In the IC's report it  
14 is pretty clear. But that does not comport with what we  
15 proposed.

16 CHAIR McRAE: My concern here is, we are  
17 looking at all different technologies. I see some things  
18 as hard and fast.

19 One of my concerns, and even as I went  
20 through the materials that were submitted, I am not  
21 altogether clear on the impact of the decision as it  
22 relates to when versus IGCC or this, or that or the  
23 other.

24 So, while I agree in principle that you  
0473

1 don't want to negotiate on a one on one, I don't know  
2 about the nuances of particular technologies and how that  
3 may impact a term.

4 So, I personally am somewhat reluctant,  
5 particularly without having thoroughly reviewed the terms  
6 because I was not exactly clear that I would have to  
7 decide today that all of this is final; nor do I have  
8 hope that I would ever have to. I wish the parties could  
9 work that out.

10 But given the circumstance, I am a

11 little reluctant to say that everything is absolutely  
12 hard and firm and nothing is negotiable. Because, to me,  
13 that represents potential for yet another barrier  
14 considering the diversity of possibilities that can grow  
15 out of this RFP.

16 So, that is just my voice, understanding  
17 your need to get on it with and wanting certainty and the  
18 like. But there is a background that I have that says it  
19 is very difficult to assume, particularly with things you  
20 know nothing about. And I will be the first to admit, I  
21 have little knowledge of when, and probably not much more  
22 about IGCC.

23 MR. WILSON: Your Honor, the way we  
24 structured the RFP is not to the pick winners between

0474

1 technologies, but to make sure that the needs of the  
2 customers are met, the needs of the SOS customers, and  
3 that we obtain a supply that is sufficient.

4 Those are the items that we put in  
5 place. So, they apply across the board. We are not  
6 looking to choose a winner. We are looking to have a  
7 process that results in certainty and serves the  
8 customers' needs.

9 CHAIR McRAE: And I understand you are  
10 not looking to choose a winner.

11 My point is, I don't want to exclude a  
12 potential winner because the terms, by their nature,  
13 would remove them. And I'm simple saying, I don't  
14 frankly know all of the terms that you have. I know that  
15 I have seen markups here. But I didn't study them  
16 in-depth. I mean, if the parties want to agree on a set  
17 of terms that they think are innocuous, I don't have a  
18 problem with that.

19 But in the abstract for me to say that,  
20 I have a little bit of problem.

21 COMMISSIONER WINSLOW: Madam Chair,  
22 consistent with what I had to say before, I don't want to  
23 buy onto a procedure that is going to set barriers up, as  
24 far as maybe two or three different conditions in the bid

0475

1 process that are going to cause problems. And, perhaps,  
2 an excellent idea, maybe an innovative idea, maybe  
3 something with favorable characteristics gets kicked out  
4 the door.

5 So, I'm for the Staff's position. I  
6 move that the Commission support Staff's position.

7 COMMISSIONER CLARK: Second.

8 CHAIR McRAE: All in favor.

9 Yea.

10 COMMISSIONER LESTER: Yea.

11 COMMISSIONER WINSLOW: Yea.

12 COMMISSIONER CONAWAY: Yea.

13 COMMISSIONER CLARK: Yea.

14 CHAIR McRAE: Opposed? Very fine.

15 With regard to bid evaluations.

16 Mr. Kempton.

17 MR. KEMPTON: I would just like to

18 submit for consideration by the Commission that there  
19 could be two separate votes on issues here.

20 One is the relic electric within price,  
21 with a relative weighting of expected price versus price  
22 stability.

23 And I would like to point out, that the  
24 Consumer Advocate has suggested that price stability

0476

1 should be the primary factor. The price should be  
2 reduced maybe even to zero.

3 That the written comments Bluewater Wind  
4 has suggested that price is way too high in comparison to  
5 price stability.

6 I think I heard NRG making the case that  
7 price stability should be higher, but whether or not they  
8 were making that case, if the terms are left as they are,  
9 it would place an IGCC bidder at serious disadvantage  
10 against a pulverized coal bidder. I don't think anybody  
11 want a pulverized coal plant running this bid.

12 Now, that is not to exclude a particular  
13 technology de facto. But it has all kind of negative  
14 characteristics.

15 I'm suggesting that one separate vote is  
16 just a weighting of those two factors within the overall  
17 price.

18 And as a second one, I would submit for  
19 consideration that a separate vote, which really has very  
20 different issues, involve the relative weighting of  
21 price, whichever the result of that first vote is against  
22 environmental considerations, which the two have very  
23 different weighting now, and a number of commentators  
24 have addressed the weighting of these two, which one

0477

1 might read the law, giving the environmental benefit as  
2 the second most important criterion, would not suggest 60  
3 versus 14 points takes relative weighting of all price  
4 factors various environmental factors.

5 But whatever the weighting might be, I'm  
6 just suggesting those are two separate issues.

7 The first is more of a financial one,  
8 and the second is environmental versus other issues.

9 CHAIR McRAE: Commissioners.

10 COMMISSIONER WINSLOW: Madam Chair, I  
11 have no objection to addressing these two issues.

12 CHAIR McRAE: I'm sorry. I am having  
13 trouble hearing.

14 COMMISSIONER WINSLOW: I have no  
15 objection to addressing those issues.

16 I think the first issue we should  
17 address should be the super categories, as maybe the  
18 easier of the issues as we work through.

19 I, frankly, would like to have some more  
20 discussion on the environmental impact. I think that is  
21 an extremely important factor. I obviously have read and  
22 listened to the comments made earlier, which encouraged  
23 me to the Staff's position. I think I am not married to  
24 a position on that yet and would like to have some

0478

1 further comments, if the Chair would permit them, on the  
2 environmental weighting, not the price versus stability  
3 too much, but the environmental weighting.

4 I am ready to make some comments on the  
5 super categories when it is appropriate.

6 CHAIR McRAE: I think I heard  
7 Commissioner Winslow say that he wanted to hear some  
8 comments with respect to the weighting of price versus  
9 environmental benefit.

10 MR. GEDDES: Well, I'm not sure of the  
11 priority.

12 I thought he wanted to do super  
13 categories first and then the other second. So, I  
14 thought he was asking for comments on the first. Unless  
15 you would like the need to go over this again.

16 CHAIR McRAE: Was that what you said?

17 COMMISSIONER WINSLOW: I just made the  
18 observation, in my opinion, the decision on super  
19 categories versus no super categories seems to be an  
20 easier issue to tackle up front and get it out of the way  
21 and then move onto other issues.

22 I don't think the first discussion needs  
23 as much -- I don't think the first issue would require  
24 discussion.

0479

1 MR. GEDDES: I think both the company  
2 and Staff addressed their views on that. I am not sure  
3 whether the company is still opposed to that or not. I  
4 thought the form was, if they wanted to bring the issue  
5 up they would.

6 CHAIR McRAE: I thought he was asking  
7 for that, for the discussion.

8 COMMISSIONER CLARK: As far as the super  
9 categories are concerned, I mean, I like the concept.  
10 But are there subthreshold requirements within super  
11 categories that we are going to be evaluating -- the  
12 responses. Should we be doing that now, as opposed to --

13 MR. GEDDES: I am going to defer that to  
14 Mr. Sheingold, if you don't mind.

15 COMMISSIONER CLARK: It's a fuzzy  
16 concept.

17 MR. SHEINGOLD: It has a short answer.  
18 It is no. There is no minimum.

19 The purpose is to group the different  
20 categories in a way that could really be a guide to  
21 judgment. Nobody is perfect with any points. The bids  
22 are very close. They are virtually identical. And this  
23 would give a way you can look at project viability,  
24 favorable characteristics and projects, which are heavily

0480

1 weighted for environmental characteristics and price.

2 So, it gives flexibility and some  
3 guidance by which you can exercise judgment. That was  
4 the purpose of it.

5 MR. WILSON: The company still would  
6 oppose to super categories. We think it adds a level of

7 complexity to an already complex evaluation process. And  
8 given that the real time constraints -- we were really  
9 concerned about the ability to run all of these things  
10 through multiple times.

11 COMMISSIONER WINSLOW: Madam Chair, it  
12 would also seem to me, perhaps, it would lead to some  
13 duplication of effort, and it would seem also to be  
14 probably the least substantive idea, not to denigrate the  
15 idea, I think it is a good idea. Of all of the ideals  
16 that Staff and independent contractor put forward, I put  
17 this closer to the bottom in terms of its need or  
18 imperativeness in terms of the process.

19 And so, I'm mindful of my previous  
20 position where I indicated that the risk for bidders, or  
21 anything that is going to deter bidders, I think that is  
22 in that category. You make it more complicated, and on  
23 top of that, you make the company do that much more  
24 effort in order to get through the process. And I think

0481  
1 repeating some of the things, you have to look at anyway  
2 in the process.

3 So, I would favor Delmarva's position on  
4 the super categories.

5 CHAIR McRAE: Commissioner Clark.

6 COMMISSIONER CLARK: I think it does  
7 provide -- I mean, at least some measure of flexibility.  
8 And we will be making a very, very big decision for SOS  
9 customers for many years if we go this route.

10 I, at this stage, would rather have that  
11 additional bit of flexibility in reviewing maybe two  
12 close matters. The bidders are going to bid on this, I  
13 mean, they are sophisticated companies. They are going  
14 to make a choice. The developers are going to want to be  
15 part of this process.

16 I don't think that, in and of itself,  
17 would deter their bidding or certainly imbalance the  
18 interest. I favor a little bit on the side of  
19 flexibility.

20 CHAIR McRAE: Flexibility in removing  
21 the super categories.

22 COMMISSIONER CLARK: In keeping the  
23 super categories.

24 CHAIR McRAE: Commissioner Winslow

0482  
1 favors not having super categories.

2 COMMISSIONER WINSLOW: Perhaps, I  
3 misunderstood.

4 But my understanding was, this was a  
5 threshold situation.

6 Am I mistaken on that?

7 MR. SHEINGOLD: It is not a threshold.  
8 There are no minimum in any of these categories. It is  
9 just a way of combining point scores. There is no  
10 additional analysis that we're doing to do this.

11 Just kind of a point of context.  
12 Generally speaking, you have point scoring for bid  
13 evaluation, if it was done solely by a company, as

14 opposed to a governmental decision maker, they do tend to  
15 be just points. If it's a governmental decision maker  
16 where they would like to exercise judgment and making the  
17 final decisions, having the ability to exercise judgment,  
18 aside from the specific point scores, is a feature that  
19 is fairly common. And that is what we're suggesting  
20 here.

21 CHAIR McRAE: Well, you have been asked  
22 for action at this point on the super categories.

23 COMMISSIONER WINSLOW: Let's vote.

24 COMMISSIONER CLARK: Madam Chair, I move  
0483

1 that the Commission approve the use of the three super  
2 categories through the RFP process.

3 CHAIR McRAE: Is there a motion?

4 COMMISSIONER CONAWAY: Second the  
5 motion.

6 CHAIR McRAE: All in favor.

7 Yea.

8 COMMISSIONER LESTER: Yea.

9 COMMISSIONER CONAWAY: Yea.

10 COMMISSIONER CLARK: Yea.

11 CHAIR McRAE: Opposed?

12 COMMISSIONER WINSLOW: I abstain.

13 CHAIR McRAE: Abstention by Commissioner  
14 Winslow.

15 And then we had the price versus  
16 environmental benefit. Point spread with regard to that.

17 I would ask the consultant if you would  
18 to clarify. I have recollections, but I don't have full  
19 details. It seems to me environmental benefits are  
20 covered a couple up places. I know the 14 points. I  
21 know it was up to 14 points. Somewhere else I think  
22 there are six points added, so it is 20 points. I can't  
23 remember where. In emissions or something. Maybe  
24 Delmarva. I can't remember who put that together. Even

0484

1 in looking at that issue, I think firm numbers ought to  
2 be in play.

3 MR. SHEINGOLD: Well, there are a number  
4 of different categories. Environmental which has 14  
5 points. There is fuel diversity. If you are looking at,  
6 say, a wind project, that would score very highly. It  
7 also would be considered in terms of price stability, and  
8 the fact that the bidder would assume current and future  
9 environmental compliance costs. So, it would be taken  
10 into consideration in price.

11 So, there are a number of ways in which  
12 the environmental impacts will sort of flow down through  
13 the scoring system. I don't know if that answered --

14 MR. TOLMAN: Madam Chair, point of  
15 information, please.

16 When Dr. Kempton spoke, he asked that  
17 the Commission consider two separate different issues.

18 One, the distribution of points within  
19 the price category. And secondly, price category versus  
20 the environmental. And we got a new issue introduced,

21 which was the consideration of three super categories.  
22 Do you intend to deal with the  
23 distribution within the price category after you have  
24 discussed the --

0485

1 CHAIR McRAE: I thought I was trying to  
2 do that now. That is what my question was on. Price  
3 versus environmental. And I was asking the consultant to  
4 get grounded -- what were the points because  
5 environmental is not just covered in the 14 points. It  
6 is covered in other aspects of the proposal.

7 So, my question was designed to get to  
8 the very point you're raising here.

9 MR. TOLMAN: Then, you are going to get  
10 to the distribution of points within the price category  
11 as a separate issue after this relative price versus  
12 environmental.

13 Is that correct?

14 CHAIR McRAE: Yes. I am trying to find  
15 out --

16 COMMISSIONER CLARK: Madam Chair, I  
17 think the point is, we want to affirm whether or not  
18 we're going to go with the 60 price versus nonprice  
19 factor, 60/40. Go from the broad prospective and decide  
20 what that makeup is and then cover the point allocation  
21 within that price or nonprice item.

22 CHAIR McRAE: So, you want a decision on  
23 the 60/40 first.

24 MR. CHERRY: 40 and 20 out of the price  
0486

1 component.

2 I think Mr. Kempton point was, let's  
3 debate the relative importance and the relative point  
4 spread under the price category to price, absolute price,  
5 and price stability. That composes 60 points. Is it  
6 40/20? Should it be something different? Should price  
7 be considered at all?

8 And the second issue that Mr. Tolman is  
9 getting to is what we were just debating a minute ago.  
10 And that is within the nonprice category stability versus  
11 environmental.

12 COMMISSIONER CLARK: And if we are going  
13 with the presumption that all parties agree that those  
14 two category 60/40, that's fine, depending upon where  
15 that is. Do you understand? Do you understand where I  
16 am coming from? If you weigh one factor in a nonprice  
17 category much higher, you may want to have it 50/50,  
18 60/40, 65/35. I guess the parties are all in agreement,  
19 it should be 60/40 then we should go onto the second  
20 step.

21 CHAIR McRAE: I think the question  
22 triggered an issue as to whether the parties are in  
23 agreement. Well, the parties maybe here, but there is a  
24 question of challenge to that.

0487

1 If I am understanding Mr. Kempton  
2 correctly, are you questioning the 60/40 component?

3 MR. KEMPTON: Well, if I could slightly  
4 modify what Commissioner Clark just said, it is 60/14.  
5 In other words, it is a trade off between all of the  
6 price categories together versus within the nonprice the  
7 environmental one which seems to be the focus of most of  
8 the comments, whereas contract terms and so forth which  
9 are also in the nonprice, have not been addressed so  
10 much.

11 So, if there were five points taken off  
12 overall price, or 30 points taken off, that would  
13 presumably get added onto the environmental part within  
14 that 40.

15 CHAIR McRAE: You know, I was trying to  
16 pin down, which ties into your question is, environmental  
17 shows up in places. See, I don't know what environmental  
18 means in the point system to you because when we talk  
19 about fuel diversity, when we talk about emission  
20 control, which is not under environmental, necessarily,  
21 broadly, as I recall.

22 So, I don't even have a firm number as  
23 to what is environmental because there is potential for  
24 environmental, clearly, being higher than 14.

0488

1 MR. FIRESTONE: I would agree with that.  
2 But just because you have fuel diversity doesn't  
3 necessarily mean it is environmental.

4 CHAIR McRAE: It doesn't mean it is and  
5 it doesn't mean it isn't.

6 MR. FIRESTONE: It could be nuclear  
7 fuel. That would be diverse for Delaware, but would not  
8 necessarily be considered to be proenvironmental.

9 CHAIR McRAE: Proenvironmental. Would  
10 emissions control be considered proenvironmental?

11 MR. FIRESTONE: Reduction in  
12 environmental impacts.

13 CHAIR McRAE: I believe there is a  
14 separate number for that that is not tied to environment.  
15 Is that correct?

16 MR. FIRESTONE: My understanding is, it  
17 is all in the 14. Within the 14, it's subdivided. So,  
18 there are four that relates to CO2 emissions and four  
19 that relate to conventional air pollutants. And then  
20 there's a few other points that go to land impact, water  
21 impacts and wildlife impacts.

22 But that there really are 14 explicit  
23 points for environmental. There are 20 explicit points  
24 for price stability. And, again, you could use coal and

0489

1 potentially have stable prices. And there are 33 points  
2 right now for price, and then there are, I think, six  
3 points for exposure which is its own sort of category  
4 within the price category.

5 MR. KEMPTON: Since I was asked what my  
6 suggestion is, which, of course, the Commission may take  
7 a different direction, it was simply to ask the trade off  
8 between the explicit environmental points, which are 14  
9 versus the price points. Because most of the debate



10 seems to be between those two.

11 It's true that there are other things  
12 that might have environmental components or might not.  
13 But there may be support, or there may be a vote against  
14 increasing the part that is explicitly environmental  
15 against the part which was explicitly price related.

16 CHAIR McRAE: Any comments from the  
17 Staff consultant's on that?

18 MR. GEDDES: I would ask Mr. Sheingold  
19 to respond to that.

20 MR. SHEINGOLD: Yes. That was generally  
21 an accurate summary of the scoring system.

22 But what we have done, compared to what  
23 Delmarva proposed, we have decreased the price score from  
24 40 points to 33 points.

0490

1 We have increased the environmental  
2 score from seven to 14 points. So, we have taken into  
3 consideration some of these comments to provide more  
4 points for the environmental score. Things that are  
5 explicitly environmental.

6 And I would add, just in the context of  
7 other RFP's, what is explicitly priced as a percentage,  
8 which is a third, is significantly lower than what I have  
9 seen in other RFP's. Typically, it is 50 percent or  
10 above.

11 So, I think we moved back the price  
12 stability score from 15 to 20. So, we have made some  
13 adjustments to take into consideration some of the  
14 comments made.

15 MR. KEMPTON: Are other RFP's operating  
16 under a legislation that prioritizes price stability  
17 first and environmental consideration second? I don't  
18 think so.

19 You're talking about RFP's that are  
20 operating under different law. We have explicit  
21 requirements in this law.

22 CHAIR McRAE: Well, I would just say,  
23 looking at it, my sense was that it did prioritize price  
24 stability, actually, over other considerations.

0491

1 MR. KEMPTON: Excuse me.

2 CHAIR McRAE: My reading of House Bill 6  
3 was it did prioritize price stability over other  
4 considerations.

5 Well, Commissioners, I do believe there  
6 is a proposal before us to consider reapportioning the  
7 point allocation to put more toward environment. I  
8 honestly don't know what your pleasure is there, as well,  
9 as Mr. Cherry can certainly weigh in here, as well as  
10 Delmarva because I am sure it has implications for them,  
11 as well.

12 Anyone?

13 MR. CHERRY: Let me say something.

14 I think we've come a long way in this  
15 discussion on the environment since we first started  
16 talking about this when the legislation was passed.

17                   And Mr. Kempton, I agree with the strict  
18 reading of the legislation. You were here, and I was  
19 here and many of the folks in this room were here. I  
20 honestly don't think that the legislature would have  
21 intended us to ensure an RFP or a new generation source  
22 in Delaware that would ensure stable prices at the  
23 expense of very high prices.

24                   So, I think price has to be a

0492

1     consideration here. It has to be.

2                   I think the consultant has done a good  
3 job of weighing the many factors that are at play here.  
4 We took it from seven points in Delmarva's proposal to  
5 14. We got the stability factor, price stability factor  
6 that could take that 14 higher. We got the fuel  
7 diversity factor that could take that price higher.

8                   We got super categories that could go  
9 either way admittedly. And I think we heard it here  
10 today. Some folks say, Well, gee super category could  
11 work against me. Others say it could work for me. I  
12 think it can work both ways. I think it is a good  
13 leveling device.

14                   I am not entirely satisfied with the  
15 points that the environment has gotten.

16                   I am satisfied that we have addressed  
17 carbon. I am satisfied with some of the pass through  
18 requirements.

19                   But I do think what the Staff has put  
20 together with our consultant's assistance is a good  
21 compromise. We can argue whether it ought to be one  
22 point more, five or more or five less. But I am not sure  
23 we are going to get anywhere closer to consensus or  
24 agreement on what the right formula is given the intent

0493

1     and uncertainty in the legislation.

2                   I think we have got before us a pretty  
3 good proposal on the Staff recommendations.

4                   With one exception, I might add, and I  
5 got the mic so I can make this. The one point, and it is  
6 only one point, but I got to stand on my soapbox about  
7 something for generators that might be able to bid into  
8 the process and get an extra point for reducing their  
9 current emissions has got to go. If it is a point that  
10 is to be awarded under the process, I could not support  
11 that. If it's a concept that the evaluators look at, it  
12 ought to be considered maybe in the super category  
13 context.

14                   But I cannot agree that even giving one  
15 point to a company that would have the capability of  
16 reducing their emissions by virtue of them meeting here,  
17 or by virtue of them having greater emissions per  
18 megawatt hour than somebody else. Or in ignorance of  
19 what the Department of Natural Resources is doing with  
20 our Multi P rule and ratchetting down on emissions that  
21 we are going to do regardless of what happens here today.

22                   So, with that one caveat, I am satisfied  
23 with the consultant's report and what's presented to us

24 here from Staff.

0494

1 CHAIR McRAE: Well, I certainly think  
2 that was well said. I went back to look at the points  
3 myself. I found it difficult to try to remember.

4 I think Phil Cherry has made some very  
5 excellent points. I don't know what the Commission's  
6 views on that are. I remember see some of the nonprice  
7 points, for your information, on Page 62 in the final  
8 report.

9 I think the changes, and I'm trying to  
10 find the other ones that we are talking about. The price  
11 ones are on -- I did not find that page -- I wanted  
12 everybody to take a look at that. The proposed last  
13 summary of how they should be aligned or 62 and 63  
14 following nonprice factors.

15 MR. TOLMAN: Madam Chair, as a point of  
16 information here.

17 Four points within the 14 point category  
18 for environmental issues are worded to minimize carbon  
19 dioxide. But I wonder how that works into the  
20 consideration of the RGGI and the renewable portfolio  
21 standard that the state has already committed itself to.

22 Can Mr. Cherry or, perhaps, someone else  
23 comment on that?

24 CHAIR McRAE: I will ask, do you want to  
0495

1 comment on that or the consultant? Well, the four  
2 points that are required in environmental for minimizing  
3 carbon dioxide.

4 Can someone who is participating in  
5 RGGI, or subject to the requirements of RGGI benefit from  
6 those points and RPS?

7 MR. TOLMAN: Yes. Both the RGGI and  
8 renewable portfolio standard, they would both commit  
9 Delaware to reductions in CO2 emissions, or, at least,  
10 the case of RGGI the whole seven state area.

11 CHAIR McRAE: I think the consultant  
12 also said something on that. You may have. But I will  
13 let Phil Cherry speak first.

14 MR. SHEINGOLD: In terms of the way the  
15 point scoring would work, and it is going to be based on  
16 the emissions or emission rates per megawatt hour.

17 MR. CHERRY: So, you don't award points  
18 for compliance with those programs. You award points on  
19 the emission rates.

20 MR. SHEINGOLD: Probably, per megawatt  
21 hour.

22 MR. CHERRY: So, your point, Mr. Tolman,  
23 participation in RGGI, or compliance with RGGI doesn't,  
24 in and of itself, get points. Emissions get points.

0496

1 So, you would look at the facility, what  
2 CO2 emissions might be per megawatt hour and divi all of  
3 those points out according to that metric, not  
4 necessarily whether or not they complied with RGGI or  
5 bought their allowances. Well, I'm not sure how the

6 renewal portfolio standard would impact the generators  
7 for RGGI.

8 MR. TOLMAN: My concern is that we, as  
9 the State of Delaware, committed ourselves to two  
10 different agreements now, which ultimately have the  
11 potential of decreasing CO2 emissions in the State of  
12 Delaware.

13 I wondered how we make this compatible  
14 with putting in new generating facilities, which are  
15 going to emit a large increase of CO2 into the  
16 atmosphere.

17 MR. CHERRY: Well, whatever gets cited.  
18 If it's fossil fuel based, it will have to comply with  
19 those programs.

20 So, we can look forward beyond what The  
21 State of Delaware's annual CO2 emissions are. This  
22 ranking system, I think, offers a point rationale or  
23 points or reward system for facilities that emit less CO2  
24 per megawatt hour than other facilities. Wind over coal,

0497  
1 for instance.

2 CHAIR McRAE: I would like some guidance  
3 from the Commissioners on this point.

4 I think Phil Cherry gave us something to  
5 think about. You also heard from Mr. Tolman and  
6 Mr. Kempton. I see Mr. Firestone's hand up. And  
7 thereafter, I would have the Commissioners to determine  
8 whether we want to be on these points.

9 Mr. Firestone.

10 MR. FIRESTONE: Yes. I would just  
11 suggest the Commission, perhaps, take up an explicit  
12 proposal, something along the lines of shifting six  
13 points from price to environmental reduction. And so,  
14 rather than debate these sort of loose notions that we  
15 actually focused in on in explicit proposal of shifting  
16 some points from price to environmental impact for  
17 capturing.

18 COMMISSIONER WINSLOW: Madam Chair, I  
19 agree with you about your comments about Mr. Cherry's  
20 comments. I thought that they were logical and common  
21 sense behind them. I think there has been some movement  
22 that we talked about with respect toward the environment  
23 from other factors. And I also believe about the point  
24 that Mr. Cherry referred to is a good point.

0498  
1 For that reason, I would move consistent  
2 with Mr. Cherry's comments.

3 COMMISSIONER CLARK: Second with some  
4 comments.

5 CHAIR McRAE: Second with some comments.

6 COMMISSIONER CLARK: Point of order. I  
7 understood Mr. Cherry's suggestion to encompass that  
8 existing generators would not be able to obtain point  
9 credit under the environmental category for reducing  
10 their existing emissions.

11 COMMISSIONER WINSLOW: Correct.

12 CHAIR McRAE: Okay. It has been moved

13 and seconded that we accept the point allocation that has  
14 been provided with the understanding noted.

15 CHAIR McRAE: All in favor.

16 Yea.

17 COMMISSIONER LESTER: Yea.

18 COMMISSIONER WINSLOW: Yea.

19 COMMISSIONER CONAWAY: Yea.

20 COMMISSIONER CLARK: Yea.

21 CHAIR McRAE: Opposed? Very fine.

22 Let's a three-minute break. We are

23 really coming to the finish line.

24 (A break was taken at, approximately,

0499

1 6:00 p.m.)

2 (Back on the record at, approximately,

3 6:10 p.m.)

4 CHAIR McRAE: Are there any other

5 issues in bid evaluation that need to be addressed?

6 If not, we will move on to T&D

7 Evaluation. Is there anything there?

8 I don't see anything we need to deal

9 with there.

10 MR. WILSON: Madam Chair, is it  
11 necessary to vote to reflect the agreement that it not be  
12 limited to five years, the evaluation?

13 CHAIR McRAE: I think we said that  
14 unless you disagreed with Staff, who said the same thing  
15 as you said, basically.

16 MR. WILSON: But there is a party on the  
17 record who disagrees with that.

18 MR. GEDDES: But that party is not  
19 saying anything.

20 CHAIR McRAE: Well, we don't really want  
21 to encourage them to speak if they are not talking.

22 COMMISSIONER WINSLOW: Madam Chair, I  
23 don't think he is listening.

24 CHAIR McRAE: That is fine with me.

0500

1 Maybe he has dropped the issue. In all events, I think  
2 to Delmarva, we are on the same page, Staff and yourself.

3 The next issue is the imputed debt  
4 offset.

5 COMMISSIONER CLARK: That was an  
6 agreement to agree category; wasn't it?

7 MR. GEDDES: Point of clarification.  
8 Yes. Commissioner Clark is correct. We agreed that  
9 issue is resolved.

10 CHAIR McRAE: Yes. I will quickly turn  
11 the page.

12 Test bidding. I don't think there's an  
13 issue there either.

14 Default remedies.

15 Where are we here?

16 COMMISSIONER CLARK: Did this go away  
17 when the issue of firm versus unit contingent was signed,  
18 as a point of order.

19 CHAIR McRAE: We are gone with that.

20 COMMISSIONER WINSLOW: I concur.  
21 CHAIR McRAE: Now, we have changes after  
22 contract.

23 MR. WILSON: We would ask for a specific  
24 vote on each of these three items.

0501

1 CHAIR McRAE: Change in law and how it  
2 will be handled. Pass through of costs. And change in  
3 control.

4 Let me just make sure.

5 COMMISSIONER WINSLOW: Would Mr. Wilson  
6 articulate what his difference is with Staff in the  
7 change of law category, if any.

8 MR. WILSON: Fundamentally, it all ties  
9 back to pass through. If there is a change in law,  
10 whether it is a policy position, or it is a tax position,  
11 it should not impose any additional costs on the company  
12 that is not automatically recoverable on a dollar per  
13 dollar basis from the customers.

14 COMMISSIONER WINSLOW: Are there  
15 presently laws that would support that position? In  
16 other words, the laws that bind us.

17 MR. WILSON: Present policy of this  
18 Commission would support that position.

19 COMMISSIONER CLARK: Change in law that  
20 applies to bidders, to the generators. That is why I'm  
21 confused.

22 MR. WILSON: It depends on how the  
23 Commission ultimately decides on how something, such as a  
24 BTU tax is treated, whether it's considered a tax or

0502

1 whether it's a considered a policy, and who bears the  
2 cost of that.

3 Our concern is that the company does not  
4 want to be put in an intermediate position where the  
5 marketer is expecting payment and the company has not  
6 approved the pass through.

7 COMMISSIONER WINSLOW: And we are  
8 concerned about that, as well. But I believe it says  
9 that bidders will assume change in law risk with one  
10 exception. And that is the exception you just commented  
11 upon, in which case if it is above the average, the cost  
12 would be borne by the seller.

13 MR. WILSON: Right. But there was  
14 substantial debate on that one exception.

15 CHAIR McRAE: There was. Not that it  
16 necessarily effects the Commission's position. But there  
17 certainly was an issue raised about the pass through on  
18 the carbon of BTU tax and whether it incentivized abuse  
19 of environmental consideration. Because if you are not  
20 feeling the cost, you don't really have an incentive to  
21 -- you know -- to take any measures. That was raised in  
22 the discussions.

23 CHAIR McRAE: Mr. Long.

24 MR. LONG: Thank you, Madam Chair.

0503

1 I addressed this issue earlier. Our

2 issue here is simply, the inputs that go into putting our  
3 bid together, our proposal for the RFP are based on  
4 knowns at the time. We can't know exactly what law  
5 changes are going to be made some time down the road.

6 With respect to the carbon tax, we don't  
7 even know, outside of the RGGI process, what specific  
8 items, what specific limits are going to be put into  
9 place. There is no way for us to accurately put a bid on  
10 something that has not happened yet.

11 As a result, with respect to changes in  
12 law going forward, we need, in order to get this project  
13 financed, we need the ability with changes in law for  
14 things like the carbon tax and other environmental  
15 regulations, things of that nature, to be able to either  
16 pass the cost through or re-open negotiations on the  
17 contract.

18 It's imperative. It's clear. This is  
19 another one of issues that is extremely important to this  
20 process. Commercially, this is done regularly.  
21 Commercial entities which are entering into contracts  
22 which each other that can't predict these things take  
23 into account the need to re-open discussions on them or  
24 pass those costs through at a later date.

0504

1 MR. WILSON: That would apply to  
2 contracts that are freely negotiated. But in this  
3 setting, that is not the case. So, these protections are  
4 necessary at the front end because all of these matters  
5 are being decided on footing which is decided to be  
6 unequal.

7 MR. CHERRY: Mr. Long, I appreciate all  
8 that NRG has done to further the discussion of IGCC here  
9 in Delaware and elsewhere. You all are leaders in  
10 pushing this issue. And I appreciate that.

11 I thought I had heard you say earlier  
12 that your bid would include carbon capture and  
13 sequestration. So, presumably, you know the cost of  
14 that, and you have that number.

15 I fully appreciate your inability to  
16 predict what any sort of carbon tax would be.

17 But I thought we had covered the carbon  
18 tax that it would be able to pass through within the PJM  
19 classic model. So, there might be some method of  
20 calculation for you or actually relieves you of the method  
21 of calculation.

22 And as for other criteria pollutants,  
23 SOX, NOX, PM, you are well aware of what we are doing  
24 here in Delaware under the Multi P rule. You profess

0505

1 that your IGCC facility will meet those requirements.  
2 Timing is still an issue, and that I'm sure will be  
3 resolved at some point. Clearly, then, you got a price  
4 tag on that.

5 So, with those sort of three components,  
6 is there still an issue for NRG given where the Staff has  
7 come out on this issue?

8 MR. LONG: There is. We are dealing

9 with up to a 25-year contract here. And while we are  
10 dealing with those things you mentioned right now, we  
11 don't know what DNREC is going to propose, or what the  
12 Federal EPA is going to propose at a later time.

13 On the carbon issue, let me be clear  
14 about that. We have proposed carbon capture now.  
15 Clearly, carbon capture is the first step in the equation  
16 to addressing that.

17 The sequestration thing, as I was  
18 talking to some other folks earlier, we may be able to  
19 deal with in time for this RFP if the stars align. If it  
20 doesn't, that's clearly something that we are going to  
21 have to take into account at a later date.

22 COMMISSIONER WINSLOW: Madam Chair.

23 Mr. Long, the only standard Staff would  
24 hold you to is the average entity. In other words, we

0506

1 are not setting up a very high standard. Average is a  
2 pretty mediocre sort of what you want your kid to get in  
3 school. You guys are by reputation above average. What  
4 makes you think you are going to perform as a risk -- if  
5 you can perform as just an average player in the field.

6 MR. LONG: Well, we are all in the  
7 business of trying to avoid risk as much as possible. I  
8 think that's what it comes down to.

9 COMMISSIONER WINSLOW: We would like  
10 there to be some incentive to make sure that you continue  
11 to feel that way.

12 MR. LONG: Well said. I think we are  
13 trying to set the bar and provide incentive for a lot of  
14 other companies to put things like carbon capture on now.

15 And in the same spirit of doing that, we  
16 are also trying to mitigate the risk we see in this going  
17 forward. And also at the same time, make sure this  
18 agreement, this PPA has financeable terms in it. Even  
19 the average component that you talked about, we have not  
20 seen in other contracts. It is not something that the  
21 investors have looked at.

22 COMMISSIONER WINSLOW: Most of the PJM  
23 standards are pretty much known and worked out and pretty  
24 good formulized.

0507

1 So, don't you think that would occur in  
2 this situation, as well, that a group would get together  
3 and come up with standards and report them in an  
4 appropriate fashion.

5 MR. LONG: Commissioner, it is a fair  
6 point.

7 All I can say is, when we sit down to  
8 put a bid together on this contract and when are  
9 financiers go to look at it, it is not going to be on an  
10 issue-by-issue basis the way we looked at these today.  
11 It will be the RFP, PPA in totality. There will be a  
12 score card.

13 And as we know, and we have discussed  
14 repeatedly today, there are a number of provisions in the  
15 report not just from Delmarva, but from the Staff



16 recommendations, as well, that have been problematic from  
17 the financing standpoint.

18 And my goal in raising this issue and  
19 the other ones today is to make sure when NRG bids on  
20 this, and, in fact, when any other entity bids on this,  
21 we got the ability to go and get it financed and make it  
22 happen.

23 CHAIR McRAE: Yes.

24 MR. CHERRY: Mr. Long on the issue

0508

1 document, Page 20, Item 17, which is where we are today,  
2 under NRG's comments there is a quotation here out of the  
3 consultant's report that says, and I quote, It is  
4 standard industry practice in long-term PPA's that future  
5 environmental compliance costs that are not in the nature  
6 of a tax, pursuant to existing and future laws and  
7 regulations, would be a seller's responsibility.

8 Do you disagree with that  
9 characterization?

10 MR. LONG: Should be the seller's  
11 responsibility.

12 MR. CHERRY: Yes. That is what it says.

13 Shall be seller's responsibility. It is  
14 standard industry practice.

15 MR. GEDDES: That is a quote from us.

16 MR. CHERRY: Am I reading this  
17 correctly, Mr. Consultant?

18 MR. SHEINGOLD: It sounds like something  
19 we said.

20 MR. GEDDES: He is quoting from Staff's  
21 report.

22 MR. CHERRY: Yes, I am.

23 MR. GEDDES: And you are asking him --

24 MR. CHERRY: I am asking Mr. Long

0509

1 whether he agrees with that statement or not. The  
2 suggestion is, they could not live with that kind of an  
3 arrangement. And yet, I am trying to find out if it is  
4 standard industry practice or not.

5 MR. LONG: We disagree with that  
6 statement.

7 CHAIR McRAE: This statement does not  
8 reflect your inputs. The statement in here does not  
9 reflect your inputs.

10 MR. LONG: No. The statement does  
11 reflect our inputs. We are pointing out something that  
12 is in the consultant's report that we disagree with.

13 MR. GEDDES: Point of clarification.

14 We made that as a statement. NRG is  
15 disagreeing with it. That is the industry standard. So,  
16 there is a disagreement between the Staff Consultant and  
17 NRG as to whether that is the standard or not.

18 COMMISSIONER CLARK: From Delmarva's  
19 prospective, you don't have an issue with the Staff's  
20 recommendation provided that additional marginal carbon  
21 tax passes through to the SOS ratepayer.

22 Is that correct?

23 MR. WILSON: That's correct.  
24 CHAIR McRAE: You just want a clear  
0510  
1 decision. You don't want a decision later.  
2 MR. WILSON: Absolutely. We want the  
3 decision on the record, so it is clear this is what we  
4 were instructed to do.  
5 CHAIR McRAE: I do think from what I am  
6 reading that is being proposed by Staff appears to be  
7 reasonable if you tie it to an average and the overall  
8 average goes to the seller. And I think the average  
9 helps keep the competitive balance there. Within PJM,  
10 you are going to be facing, and others are facing this  
11 number. It kind of puts them on equal footing. That is  
12 my sense of what I get from this.  
13 Is that not what the goal is to keep  
14 them on equal footing here by using the PJM average? I  
15 am talking about Staff's language on this as far as the  
16 pass through issue.  
17 MR. GEDDES: I will ask Mr. Sheingold to  
18 clarify that for you.  
19 MR. SHEINGOLD: Yes. We would expect  
20 market prices to increase by that amount. So, we are  
21 saying that the amount of increase that would be allowed  
22 in the contract in the event of a tax would be by a  
23 similar amount.  
24 CHAIR McRAE: I would move that we adopt  
0511  
1 Staff's language in this regard.  
2 MR. WILSON: Your Honor, the point we  
3 were raising, it is Staff's language, plus the pass  
4 through.  
5 COMMISSIONER CLARK: Carbon tax --  
6 CHAIR McRAE: I will make it clear. It  
7 would include a pass through of the costs and the seller  
8 gets the overage. It does not say that it's clear. So,  
9 that's a part of my motion.  
10 MR. WILSON: Thank you.  
11 COMMISSIONER CLARK: Second.  
12 CHAIR McRAE: My motion is we accept  
13 Staff's language with respect to the tax, and then it has  
14 special provision for the carbon tax, BTU tax.  
15 And I'm saying to the extent that there  
16 are costs that are transferred to the buyer, they are  
17 pass through costs that will not be absorbed by Delmarva.  
18 MR. WILSON: One last clarification.  
19 It is the change of law which includes  
20 the tax.  
21 CHAIR McRAE: Well --  
22 MR. WILSON: It was three points we were  
23 trying to --  
24 CHAIR McRAE: Well, no. Because on one  
0512  
1 hand it says, Bidders will assume change of law risk.  
2 So, it is not all change of law, except for. So, I am  
3 not trying to say that it is a pass through on all change  
4 of law.

5 My motion is that I accept Staff's  
6 language including the exception that Staff identified.  
7 And I enlarge that to include any costs that is imposed  
8 on the buyer would be a pass through and not a cost to  
9 Delmarva.

10 MR. WILSON: I stand corrected. It is  
11 getting late. Thank you.

12 CHAIR McRAE: I understand. We are  
13 getting there.

14 I definitely am not saying, which is  
15 contrary to Staff's language, that all change of law is a  
16 pass through.

17 So, are we clear on what my motion is.  
18 Do I still have a second?

19 COMMISSIONER CLARK: Second.

20 MR. CITROLO: Madam Chair, I am not  
21 clear when you say pass through. It may be passed  
22 through as a tax, but not necessarily passed through in  
23 rates. I think that needs to be clarified. We're not  
24 talking about something that is attributable to a rate  
0513

1 increase. This would be a tax that would show up as a  
2 line item on someone's bill, not necessarily in rates.

3 CHAIR McRAE: I didn't get to that level  
4 of detail. If you think it's important to specify that  
5 where it shows up as a line items. Is that procedurally?  
6 Do you automatically do that?

7 MR. CITROLO: What I'm referring to, we  
8 are not talking about ratemaking in this particular case.  
9 We are talking about a tax that would not be imposed,  
10 obviously, by the PSC. And that our office has standing.  
11 And other than to advise if passed by a legislative  
12 committee or something from the administration.

13 I think we need to talk in a strict  
14 sense of a tax and not rates.

15 CHAIR McRAE: Okay. Is it sufficient  
16 that that has been noted in the transcript?

17 MR. GEDDES: That is sufficient, I  
18 believe. All of that can be resolved at a later date,  
19 please.

20 CHAIR McRAE: Now, do I have a second?  
21 COMMISSIONER CLARK: Second.

22 CHAIR McRAE: Second from Commissioner  
23 Clark there.

24 CHAIR McRAE: All in favor.  
0514

1 Yea.

2 COMMISSIONER LESTER: Yea.

3 COMMISSIONER WINSLOW: Yea.

4 COMMISSIONER CONAWAY: Yea.

5 COMMISSIONER CLARK: Yea.

6 CHAIR McRAE: Opposed?

7 Also, I think in terms of change of  
8 control, was that an issue? Do I recall Delmarva asking  
9 for some response on that?

10 Because I did have a sense that there  
11 might have been agreement reached that approval would not

12 be unreasonably withheld, and that was something that you  
13 and Staff pretty much came to terms on.

14 MR. WILSON: Your Honor, so long as the  
15 change of control does not jeopardize any of the other  
16 contract provisions, such as security and credit and  
17 credit quality, then we would be in agreement.

18 CHAIR McRAE: Wouldn't that go to  
19 reasonableness. That would strike me as a legitimate  
20 basis for refusal to provide approval and defensible,  
21 myself.

22 MR. WILSON: I absolutely agree. I am  
23 glad that it is on the record.

24 CHAIR McRAE: Well, that is my opinion.

0515

1 I'm one Commissioner. I'm not sure how much it helps  
2 you.

3 MR. GEDDES: Madam Chair, this is a  
4 traditional commercial term that is in thousands of  
5 contracts.

6 If there is a change in control, it  
7 gives the company an opportunity to come in and object to  
8 it on the basis -- some of the criteria that Mr. Wilson  
9 cited -- or some other criteria that they are not  
10 agreeing to. And they have a reasonable basis to object  
11 to it. And I think it covers the issue. And I think we  
12 are in agreement on it.

13 CHAIR McRAE: I think out of an  
14 abundance of caution, Mr. Wilson wanted to make very sure  
15 of that point.

16 And so, it appears that we are accepting  
17 Staff's position here understanding that it is now in  
18 agreement with the company.

19 Who was it that was worried that we  
20 would be closely aligned with Delmarva.

21 COMMISSIONER WINSLOW: Madam Chair, I  
22 was going to ask Mr. Long to address that issue on this  
23 last one. Given what has happened this afternoon, I  
24 think Delmarva would dispute that.

0516

1 MR. LONG: I want to thank you for  
2 revisiting that.

3 CHAIR McRAE: The last issue. Dispute  
4 resolution.

5 MR. WILSON: Yes. Your Honor, we would  
6 like for you to vote, basically, in support of the  
7 Delmarva position.

8 CHAIR McRAE: That's the one I was  
9 talking about.

10 Commissioners, do you have any thoughts  
11 that?

12 COMMISSIONER WINSLOW: I would like  
13 Delmarva to address the Staff's position that this  
14 opportunity that Delmarva wishes us to take is beyond our  
15 usual scope of responsibility.

16 MR. WILSON: Essentially, this entire  
17 process is beyond the usual entire scope of  
18 opportunities. So, we are into new territory. Since we

19 are there, let's be consistent. That's what we are  
20 seeking, consistent treatment. Who will know better how  
21 we arrived at the various positions than this Commission.

22 And at the end of the day, any changes  
23 that are proposed or imposed by an Arbitrator, or some  
24 other person, we have to bring it to this Commission.

0517

1 Whether that is a condition change, or it's a change that  
2 impacts customers. Because we can't unilaterally  
3 increase rates. We can't unilaterally change the  
4 contract. This is not your typical commercial agreement.

5 This is a legislatively mandated  
6 contract that will have the stamp of four or five  
7 agencies. And then you want to us unilaterally be  
8 responsible for changes and reinterpretation. That is  
9 simply not consistent with the process. It is a  
10 different process. We have to adopt a different way of  
11 arbitrating.

12 MR. GUY: Madam Chair, if I may.

13 In the Mirant case, the debtor there  
14 tried to get out of obligations to a long-term contract  
15 that had repercussions to ratepayers. They said that was  
16 in their business judgment and they could do that. And  
17 the only entity that needed to decide was the Bankruptcy  
18 Court.

19 That was an issue that PEPCO litigated.  
20 It went all the way up to the Fifth Circuit. And what  
21 the Fifth Circuit said, someone should be protecting the  
22 public interest here. And they said that that should be  
23 FERC. FERC should be involved in the process.

24 This is a situation where something

0518

1 could go awry with this contract. You are in the best  
2 position as the Public Service Commission to protect the  
3 public interest. And that is why it makes sense for you  
4 to be involved if the benefit of this contract, which,  
5 again, this is to benefit ratepayers on the assumption  
6 that power prices will be above the contract price.

7 In that situation, the best party to  
8 adjudicate that dispute is you.

9 CHAIR McRAE: Well, the Commission can  
10 certainly intervene in litigation. It may be a little  
11 different with arbitration. But to the extent that  
12 litigation was the chosen course, there is a good chance  
13 we would have standing.

14 But I want to ask Staff, I was a little  
15 taken by the language, not to say that I'm interested in  
16 extra work, but the contract dispute resolution is beyond  
17 the normal scope of PSC responsibilities. And we have  
18 certainly done a fair amount of that in telecommunication  
19 and some other things. I guess I wasn't quite clear as  
20 -- not that I am seeking additional work -- what made  
21 this uniquely separate.

22 MR. GEDDES: Well, I would not disagree  
23 with any of the comment, especially by Mr. Wilson, that  
24 we are sort of in a unique place.

0519

1 But our point was, the Commission's  
2 normal work is related to rate regulation. And  
3 arbitrating contract disputes is not.  
4 The fact that we have participated, the  
5 Commission has participated, along with other state  
6 agencies, in setting up the criteria in which this bid is  
7 going to be evaluated, and ultimately that may become an  
8 issue, I do not think that that necessarily requires the  
9 Commission to arbitrate the dispute.

10 The Mirant case that Mr. Guy likes to  
11 bring up every time he comes to the microphone was  
12 settled.

13 And I just think that our point was,  
14 this is something that probably should find its way  
15 through an arbitration first before it comes to the  
16 Commission, or the company if it losses it, I assume will  
17 be seeking some kind of rate recovery.

18 But to have a third party, an  
19 independent party, someone who was not initially involved  
20 in, perhaps, setting up the criteria, by which the bid  
21 was evaluated and ultimately accepted and power flowed  
22 under that contract, be the preferred forum for the  
23 initial resolution.

24 And in NRG's comments, there is a  
0520 perception there that this is not, perhaps, the fairest  
1 forum to initially address these disputes given the  
2 Commission's involvement in the process.

3 COMMISSIONER CLARK: I appreciate  
4 Mr. Geddes' statement.

5 I am persuaded by Delmarva's argument in  
6 this report. We spent the last seven or eight hours  
7 going through this and really deciding many of the  
8 different provisions that are going to go in this RFP.  
9 There will be many state agencies involved on the tail  
10 end. We are, essentially, dealing with SOS customers in  
11 the end. I don't see a problem with us -- I think it is  
12 most appropriate a state agency and probably we are the  
13 ones best qualified, I would imagine, to arbitrate an  
14 issue like this and make a decision.

15 I would move to approve or accept  
16 Delmarva's position.

17 COMMISSIONER CONAWAY: I will second  
18 that.

19 CHAIR McRAE: All in favor.  
20 Yea.  
21 COMMISSIONER LESTER: Yea.  
22 COMMISSIONER WINSLOW: Yea.  
23 COMMISSIONER CONAWAY: Yea.  
24

0521 COMMISSIONER CLARK: Yea.  
1 CHAIR McRAE: Opposed? Very fine.  
2 For the record, even though he is not  
3 affected, Mr. Cherry abstained.  
4 MR. GEDDES: Madam Chair, before  
5 everyone gets in a rush to leave, I believe the  
6 Commission earlier said that they were inclined to have a  
7

8 final clean-up motion, to the extent specific issues were  
9 not discussed that the Staff's report would be the basis  
10 on which the order would be written.

11 COMMISSIONER CLARK: Madam Chair, I move  
12 that the independent consultant's report be adopted on  
13 any issues not covered, other than the two that will be  
14 addressed at the October 31st meeting.

15 CHAIR McRAE: Is there a second?

16 COMMISSIONER CONAWAY: Second the  
17 motion.

18 CHAIR McRAE: All in favor.  
19 Yea.

20 COMMISSIONER LESTER: Yea.

21 COMMISSIONER WINSLOW: Yea.

22 COMMISSIONER CONAWAY: Yea.

23 COMMISSIONER CLARK: Yea.

24 CHAIR McRAE: Opposed? Very fine.

0522

1 And before we adjourned, I truly want to  
2 thank everyone for your thoughtful comments. It was,  
3 indeed, very informative to me that you stayed until  
4 darkness, which I only thought I was joking about and  
5 have really given some very considerable input into this  
6 process.

7 At the end of the day, nobody walks away  
8 with everything they like to have and that includes even  
9 the Commissioners. But, I think, that we did put forth  
10 our best efforts to try to work through some very complex  
11 issues, tied to some fairly complex legislation. And, of  
12 course, as time goes on, we hope that you will continue  
13 to follow the process and be helpful where you can.

14 Thank you, again. I, especially, want  
15 to thank my colleague, Philip Cherry for his involvement  
16 in making the process easier by joining with us today.

17 And with that, I will say the meeting is  
18 adjourned. Thank you.

19 (The Public Service Commission Hearing  
20 was concluded at, approximately, 6:50 p.m.)  
21  
22  
23  
24

0523

1 C E R T I F I C A T E  
2 STATE OF DELAWARE:  
3 :  
4 NEW CASTLE COUNTY:

5 I, Gloria M. D'Amore, a Registered  
6 Professional Reporter, within and for the County and  
7 State aforesaid, do hereby certify that the foregoing  
8 Public Service Commission Hearing, was taken before me,  
9 pursuant to notice, at the time and place indicated; that  
10 the statements of said parties was correctly recorded in  
11 machine shorthand by me and thereafter transcribed under  
12 my supervision with computer-aided transcription; that  
13 the Public Service Commission Hearing is a true record of  
the statements given by the parties; and that I am

14   neither of counsel nor kin to any party in said action,  
15   nor interested in the outcome thereof.  
16                   WITNESS my hand and official seal this  
17   20th day of October A.D. 2006.

18  
19

20                   \_\_\_\_\_  
21                   GLORIA M. D'AMORE  
22                   REGISTERED PROFESSIONAL REPORTER  
23                   CERTIFICATION NO. 119-PS  
24